

**AUDIT OF THE NATIONAL  
WOMEN'S BUSINESS COUNCIL**

**AUDIT REPORT NUMBER 3-35**

**July 28, 2003**

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# **AUDIT OF THE NATIONAL WOMEN’S BUSINESS COUNCIL**

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**U.S. SMALL BUSINESS ADMINISTRATION  
OFFICE OF INSPECTOR GENERAL  
WASHINGTON, D.C. 20416**

<b>AUDIT REPORT</b>
<b>Issue Date: July 28, 2003</b>
<b>Report Number: 3-35</b>

**To:** Hector V. Barreto  
Administrator

David A. Javdan  
General Counsel

Thomas A. Dumaresq  
Chief Financial Officer

Julie R. Weeks  
Executive Director, National Women's Business Council

**From:** Robert G. Seabrooks  
Assistant Inspector General for Auditing

**Subject:** Audit of the National Women's Business Council

Attached is a copy of the subject report. The report contains 5 findings with 2 recommendations to the Administrator, 1 recommendation to the General Counsel, 12 recommendations to the Chief Financial Officer, and 9 recommendations to the National Women's Business Council (NWBC) Executive Director.

The findings in this report are the conclusions of the Office of Inspector General's Auditing Division. The recommendations in this report are subject to review and implementation of corrective action by your offices in accordance with existing Agency procedures for audit follow-up and resolution. Please provide your management decision for each recommendation made to you within 30 days from the date of this report using the attached SBA Forms 1824, Recommendation Action Sheet.

If you have any questions about the issues contained in the report, please contact Robert Hultberg, Director, Business Development Programs Group, at (202) 205-7204.

Attachments

## EXECUTIVE SUMMARY

The National Women's Business Council (NWBC) serves as an independent source of advice and counsel to the President, Congress, U.S. Small Business Administration (SBA) Administrator, and the Interagency Committee on Women's Business Enterprise. NWBC also develops and promotes policy and program initiatives designed to foster women's business enterprise. One such initiative was the development of venture capital forums for women entrepreneurs referred to as Springboard 2000 or Springboard. NWBC is composed of 15 council members as well as an administrative staff. The council members are non-Government employees serving without pay. NWBC's Executive Director and staff members are SBA employees who manage the daily operations and administrative matters of NWBC.

The audit objective was to determine whether NWBC's expenditures and activities were appropriate and complied with laws and regulations. The audit disclosed the following:

1. The former NWBC Executive Director and Program Manager<sup>1</sup> appear to have violated Government ethics regulations by:
  - continuing to use their NWBC positions to engage in matters related to Springboard forums after they developed financial interests in Springboard 2000 Enterprises, Inc. (SBE), an entity created to take over the Springboard forums;
  - engaging in SBE activities, although such action conflicted with their official Government duties; and
  - using Government equipment and time for SBE activities.
2. NWBC inappropriately entered into agreements for services and failed to follow applicable Federal regulations, including:
  - allowing SBE, in which the Executive Director had a financial interest, and three other women's organizations to receive revenues from the Springboard forums without properly executed contracts. SBE and one other organization received \$579,368 in leftover proceeds from the Springboard forums that were unsupported and appeared unjustified. SBE inappropriately received an additional \$63,000 in leftover proceeds from an NWBC hosted and sponsored forum held prior to SBE's incorporation. NWBC received none of the leftover proceeds even though they co-hosted or hosted several of these forums.
  - awarding sole source contracts based on justifications that did not apply to the contracts.

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<sup>1</sup> The terms "Executive Director" and "Program Manager" in this report refer to the Executive Director employed by NWBC from 11/23/93 to 5/25/01 and the Program Manager employed by NWBC from 7/6/99 to 3/23/01. The term "acting Executive Director" refers to the Director assigned to oversee NWBC operations from 6/4/01 to 9/20/02. The term "current Executive Director" refers to the Executive Director who started employment at NWBC on September 23, 2002.

- entering into co-sponsorship-type arrangements and de-facto grants, although it did not have co-sponsorship and grant authority.
- entering into contracts reserved for small businesses with organizations that were not small businesses.
- paying a contractor although the required deliverables were not received.

Additionally, the Executive Director entered into contracts for NWBC, even though she was not a warranted contracting officer.

3. The Executive Director and NWBC staff violated the Federal Travel Regulations and SBA travel policy. Some of these violations include:
  - using NWBC funds for the Executive Director's daughter to accompany her on travel;
  - using Federal funds for NWBC staff to travel to Las Vegas for a weekend staff meeting that was scheduled to coincide with the wedding of a NWBC staff member;
  - using NWBC funds to travel to a board meeting of a company that the Executive Director incorporated;
  - obtaining hotel lodging in Washington, DC, although the staff's official station was in that same city;
  - neglecting to authorize or post-dating authorizations for travel to attend conferences; and
  - approving lodging in excess of Government rates without justification.
4. NWBC entered into a series of questionable transactions that transferred what should have been appropriated funds into the Business Assistance Trust Fund (BATF), an account used to receive funds from non-appropriated sources, e.g., gifts. Though prohibited by appropriations law, some of these funds were later used to pay some of the costs for a reception given in honor of the Executive Director.
5. Other inappropriate activities identified in the audit include:
  - NWBC staff received improperly authorized cash awards.
  - NWBC's Government purchase card was used for unallowable purchases.
  - NWBC's [exemption 6] and her spouse made numerous personal calls on the Government issued cellular phone.

- NWBC staff engaged in unlawful lobbying activities by drafting and distributing lobbying letters for NWBC members with instructions to sign and forward the letters to pre-selected members of Congress.
- An individual not appointed to NWBC was allowed to serve as an NWBC member for a two-year period.
- NWBC did not prepare the required annual reports to the President and Congress in Fiscal Years (FY) 1999 and 2000. After initiation of this audit, the FY 2000 report was filed late.

SBA's insufficient oversight over NWBC allowed many of these inappropriate activities to occur. Some SBA officials who provided contracting and human resources support did not consider NWBC to be a part of SBA and, as a result, processed paperwork signed by the Executive Director without questioning its propriety. Regardless of whether NWBC is part of SBA, SBA officials should have ensured that Federal regulations were upheld. Also, since the Executive Director did not report to anyone at SBA, she operated without adequate oversight.

We made recommendations to the Administrator, General Counsel, Chief Financial Officer, and current NWBC Executive Director, to correct deficiencies identified in the audit, implement new controls to prevent such occurrences from happening in the future, determine whether some expended funds should be recovered, and recover inappropriately expended funds. We recommended the following funds be recovered:

- \$63,000 from SBE representing the proceeds from the Mid-Atlantic forum it inappropriately received;
- \$50,000 from [exemption 4] for not producing required deliverables;
- \$69,389 from appropriate parties for improperly authorized travel reimbursements;
- \$10,000 from the Program Manager for an inappropriate cash award issued as a consulting fee;
- \$3,081 from the Executive Director for the unallowable Business Assistance Trust Fund (BATF) and NWBC purchase card expenditures;
- Excess airtime charges for personal calls on a Government issued cellular phone from NWBC's [exemption 6].

Additionally, we recommended that the current NWBC Executive Director require SBE and [exemption 4] to provide justification for the \$579,368 in unsupported revenues they received from the Springboard forums and determine whether any income in excess of expenses should be recovered.

SBA Management and the current NWBC Executive Director provided responses to the draft report. They generally agreed with the recommendations presented in the report with a few exceptions. The Executive Director, Program Manager, SBE, [exemption 4] generally disagreed with the findings and recommendations presented in the draft audit report. The responses are summarized and analyzed at the end of each finding. NWBC, SBA Management, SBE, and the Executive Director and Program Manager's responses are contained in *Appendices C* through *F*.

## INTRODUCTION

### A. Background

NWBC serves as an independent source of advice and counsel to the President, Congress, the SBA Administrator, and the Interagency Committee on Women's Business Enterprise. Legislation reauthorizing SBA in 1994 expanded NWBC's mandate beyond its purely advisory role to include developing and promoting policy and program initiatives designed to foster women's business enterprise. NWBC is required to file annual reports to the President and Congress detailing its activities, findings, conclusions, and recommendations. NWBC received \$600,000 in appropriated funds during FYs 1999 and 2000 and \$750,000 in FY 2001.

Many SBA officials did not consider NWBC employees to be SBA employees and treated NWBC as a non-SBA entity. During our audit, SBA determined that NWBC's staff are SBA employees subject to all of the same rules and restrictions placed on any SBA employee.

In 1999, NWBC partnered with a non-profit organization, [exemption 4] to develop a venture capital forum for women entrepreneurs, known as "Springboard 2000: Silicon Valley" (Silicon Valley forum). The Silicon Valley forum, held in January 2000 in California, brought together over 300 venture capital investors with 25 women entrepreneurs seeking equity financing for their small businesses. The Executive Director and staff helped plan and organize the Silicon Valley forum. NWBC provided \$55,000 in Federal funds to support this event through three purchase orders. While the Executive Director was employed by the Federal Government, NWBC sponsored four additional forums in Northern Virginia, Boston, New York, and Chicago, and a second forum in Silicon Valley. NWBC provided \$25,000 to support the forum in Northern Virginia, and tried to provide an additional \$50,000 to support the other forums. The latter \$50,000 request was canceled after SBA employees discovered that the award was intended for an organization in which the Executive Director had a financial interest. Although NWBC did not provide direct funds for the last four forums, NWBC was heavily involved in organizing and managing all six Springboard forums, making these Government events. As a result, the Federal Government had a vested interest in the forums.

On September 15, 2000, the Executive Director and two associates incorporated SBE, a non-profit entity, to take over management of the Springboard forums. The Executive Director and two associates served on SBE's board of directors, and the Executive Director also served as SBE's president. The Program Manager served as SBE's registered agent, secretary and treasurer. Both the Executive Director and Program Manager were NWBC employees when SBE was incorporated, and both continued to receive Government salaries from NWBC until the Spring of 2001, when they resigned from Government service and became full-time paid SBE employees.

This audit was initiated after the Office of Inspector General (OIG) received a referral from the Office of General Counsel (OGC) about questionable NWBC expenditures and activities. The referral was also forwarded to the U.S. Senate Committee on Small Business and Entrepreneurship and to SBA's former Acting Administrator, who expressed interest in having the OIG conduct an audit.



## **B. Objective and Scope**

The audit objective was to determine whether NWBC's expenditures and activities were appropriate and in compliance with law and Government regulations. We reviewed NWBC's operations and expenditures from October 1, 1999 to May 25, 2001, and NWBC's use of SBA's BATF account from 1996 to 2001. We examined (1) purchase orders, (2) authorizations and expenditures for staff and invitational travel, (3) use of a Government-issued credit card and cellular phone, (4) employee cash awards, and (5) performance of statutory reporting requirements to the President and Congress. We reviewed documents including Government e-mails, notes, Springboard forum brochures, NWBC contracts, minutes from NWBC meetings, correspondence, and financial records from SBE and other organizations that co-hosted various Springboard forums with NWBC. We did not confirm the accuracy of the co-hosts' financial records, i.e., general ledgers and profit and loss statements. We interviewed SBA officials in the Office of Procurement and Grants Management (OPGM), Office of Chief Financial Officer (OCFO), OGC, Office of Human Capital Management (OHCM), and Office of the Chief Information Officer (OCIO); current and former NWBC members and staff; and key individuals from other organizations that played a role at Springboard forums.

We performed fieldwork from September 2001 to January 2003. The fieldwork was performed in Washington, DC, and San Francisco, CA. The audit was conducted in accordance with Government Auditing Standards.

## RESULTS OF AUDIT

### Finding 1: Possible Violations of Government Ethics Regulations<sup>2</sup>

The Executive Director and Program Manager appear to have violated ethics regulations by (1) participating personally and substantially in an official capacity in particular matters which had a direct and predictable effect on the financial interest of an organization with which they were affiliated, (2) engaging in outside activities that conflicted with their official duties, and (3) using Government equipment and time for other than authorized purposes. As Federal Government employees, they were bound by the laws of the United States, and the ethics regulations promulgated by the Office of Government Ethics. As NWBC employees, these two individuals were responsible for organizing and managing Springboard forums (the forums), an initiative started and promoted by NWBC. While having this responsibility:

- The Executive Director incorporated SBE to take over the forums from NWBC. She served as SBE's president and board member, and the Program Manager served as SBE's treasurer, secretary, and registered agent.
- SBE reported to the IRS that both of these individuals would be receiving compensation from SBE.
- The Executive Director and Program Manager engaged in SBE activities which appear to have conflicted with their duties as NWBC employees.

As a result, SBE appears to have been given an unfair competitive advantage, ultimately benefiting both individuals financially.

The Executive Director and Program Manager's fiduciary duty to SBE started no later than September 15, 2000, and possibly started earlier than that. Although we have evidence of discussions between the Executive Director and others regarding the creation of an SBE-type organization as far back as October of 1999, the documents reviewed are incomplete and sketchy at best, making it difficult to determine when the potential for a conflict of interest (or the appearance of a conflict of interest) may first have arisen. It is clear, however, that SBE was incorporated by the Executive Director (in her individual capacity) and two associates on September 15, 2000. The Articles of Incorporation list the Executive Director as a director and an incorporator of SBE and the Program Manager as SBE's registered agent. In addition, SBE's October 24, 2000, application to the IRS requesting Non-Profit Status, lists the Executive Director as SBE's president and the Program Manager as SBE's secretary and treasurer. They were to receive an annual compensation of \$100,000 and \$65,000, respectively, for their services as SBE officers. The Executive Director also served on SBE's Board of Directors. During this time, however, both individuals were still employed by NWBC. They appear to have assumed

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<sup>2</sup> Throughout this finding, we state that the Executive Director and Program Manager "appear" to have violated ethics regulations. While in our opinion there was a violation, within SBA only the Designated Agency Ethics Official or his designee can make determinations of illegality. Determinations in these instances were not made because the Executive Director and Program Manager resigned from Government service prior to the start of the audit.

the SBE positions in their individual capacities and not as part of their official duties as NWBC employees.

As officers and/or directors of SBE, the Executive Director and the Program Manager owed a fiduciary duty to SBE. As a result, the financial interests of SBE are imputed to both the Executive Director and the Program Manager for purposes of the conflict of interest statute, Title 18 United States Code (USC) § 208, and the conflict of interest regulation, Title 5 Code of Federal Regulations (CFR) § 2635.402. Consequently, from the time this fiduciary duty arose, the Executive Director and Program Manager were prohibited from participating personally and substantially in any particular matter that would have had a direct and predictable effect on the financial interests of SBE, including rendering advice, making recommendations, and expressing approval or disapproval regarding the decision to give the forum proceeds to SBE. Each person should have disqualified herself from such particular matters unless she first obtained a waiver. Neither the Executive Director nor the Program Manager obtained a waiver.

Though no waiver was obtained, it appears that both the Executive Director and Program Manager continued to participate personally and substantially in particular matters that had a direct and predictable effect on the financial interests of SBE. Examples include:

- The Mid-Atlantic Springboard 2000 forum (Mid-Atlantic forum) was held on July 11-12, 2000, two months before SBE was incorporated. On September 8, 2000, just seven days before SBE was incorporated, the Program Manager advised the organization that managed the bank account for the Mid-Atlantic forum that (1) she would be taking over “the account management and incoming invoices” from the company engaged to manage the forum, and (2) the Executive Director, who in her official capacity had signature authority for the bank account set up for the Mid-Atlantic forum, would now be co-signing all large checks. She also noted that “they” were in the process of incorporating SBE and would be setting up a bank account for SBE within a few months. On November 1, 2000, the Program Manager e-mailed the organization that managed the bank account for the Mid-Atlantic forum from her Government computer and directed them to execute a \$63,000 check payable to SBE and to send it to her at SBE. The \$63,000 represented the proceeds from the Mid-Atlantic forum. The Executive Director co-signed that check.
- On October 25, 2000, the Executive Director sent an e-mail using her Government title and e-mail address to the co-host of the Midwest forum, stating “1. [SBE] will provide [co-host] with one half of the series sponsorship money raised; and 2. [the co-host] will provide [SBE] . . . with a management fee valued at 10% of the total funds raised for the forum through sponsorships.”
- On April 9, 2001, the Executive Director attempted to enter into a contract whereby NWBC would provide \$50,000 to SBE. SBA stopped the contract after learning that the Executive Director was SBE’s president and a board member and the Program Manager was listed as an SBE employee on SBE’s web page. Government employees are prohibited from engaging in an outside activity that conflicts with their official duties. Pursuant to 5 CFR § 2635.802, an outside activity conflicts with an employee’s official

duties if it would require the employee's disqualification from matters so central or critical to the performance of his/her official duties that the employee's ability to perform the duties of his/her position would be materially impaired. One of the Executive Director's justifications for creating SBE was that the forums took up so much of the staff's time that NWBC could either work on the forums or on "everything else." By her own admission, after SBE's incorporation the Executive Director spent a large amount of official time working on the forums, and she stated that the Program Manager spent up to 100 percent of her official time working on the forums. It appears from this that the work the Executive Director and the Program Manager performed relating to the forums was central to the performance of their official duties. As such, if they were disqualified from engaging in particular matters relating to the forums as a result of their affiliation with SBE, it would have materially impaired their ability to perform their official duties in violation of 5 CFR § 2635.802.

It appears that the Executive Director and the Program Manager misused their official positions to provide a benefit to SBE. From the records reviewed, it is difficult to discern when they were acting on behalf of NWBC and when they were acting on behalf of SBE. Work they performed for SBE appears to have been accomplished while on official time and using Government equipment in violation of 5 CFR §§ 2635.704 and 2635.705, which prohibit the use of Government equipment and time for other than authorized purposes. Examples include:

- A large number of documents pertaining to SBE were found on the Government computers used by the Executive Director and Program Manager, including SBE's October 10, 2000, solicitation for a \$1 million grant from a private entity to sponsor and manage the Springboard forums, drafts of licensing agreements between SBE and organizations hosting Springboard forums, and e-mails exploring sponsorship arrangements with various organizations.
- From December 10-12, 2000, the Executive Director and Program Manager attended the SBE Board retreat on Government time and the Executive Director used Government funds for her travel. According to the meeting agenda, the purpose of the meeting was to talk about issues related to SBE. (The travel funds are questioned under Finding 3.)

It is the responsibility of each Government employee to ensure that he/she complies with the laws and regulations governing ethical conduct and to seek ethics advice when needed. During the time period covered by this audit, however, there was confusion within SBA as to the status of NWBC staff. Although the Executive Director considered herself to be a Government employee, she did not consider herself to be an SBA employee. As a result of this uncertainty, no determination was made as to whether the Executive Director and/or the Program Manager should have been required to file annual Confidential Financial Disclosure Reports, and no ethics training was provided. If such reports had been required for the fiscal year ending on September 30, 2000, Agency ethics officials would have discovered that the two women were officers and/or directors of SBE and could have taken appropriate action. It would have been prudent for these individuals to seek ethics advice prior to incorporating SBE. In addition, the Executive Director did not report to and was not under the general supervision of any Government official,

so SBA officials were unaware of her activities involving SBE or the potential conflict they presented with her official duties.

As set forth above, it appears that the Executive Director and Program Manager violated a number of ethics regulations. As a result of their actions, SBE appears to have been given an unfair competitive advantage. The Executive Director's and Program Manager's involvement with Springboard forums as part of their official duties provided them and SBE with a level of expertise in the area of venture capital that they would not have had otherwise. This connection with NWBC lent a certain degree of credibility to SBE and allowed it to take advantage of the publicity NWBC had received for its forums and the connections NWBC had made within the venture capital community. SBE also received \$63,000 generated from a forum in which SBE played no role.

## **Recommendations**

We recommend that the Administrator:

- 1A. Designate a senior SBA official to provide general supervision to the NWBC Executive Director pertaining to administrative matters and have the designated official inform:
  - i) both the Council members and Council staff that the Council staff are SBA employees and are subject to the Federal laws and regulations that apply to any employee and SBA's policies, procedures and rules in the conduct of their duties,
  - ii) Management Board members, SBA administrative offices that provide services to the Council, e.g., OPGM, OCFO, OHCM, and employees in these offices, that the expenditure of NWBC funds must follow the same rules as the expenditure of any SBA appropriated funds.
- 1B. Determine, in consultation with the Designated Agency Ethics Official, whether the duties and the responsibilities of the Executive Director and/or Program Manager are such that they should be required to file confidential financial disclosure reports.

We recommend that the current Executive Director:

- 1C. Ensure that all current and future NWBC employees receive Ethics training.

## ***NWBC and SBA Management's Response:***

NWBC and SBA Management generally agreed with the above recommendations. They claimed that they have already implemented *Recommendations 1B* and *1C* in the final report, and as such, these two recommendations should be deleted from the report. Other issues relating to the draft report recommendations were:

- SBA Management did not want to issue a supplemental regulation requiring Agency employees to obtain prior approval before seeking outside employment. In the draft report, we had originally recommended that the Designated Agency Ethics Official

(DAEO) finalize the supplemental regulation requiring agency employees to obtain prior approval before seeking outside employment. They stated that the DAEO has the authority to determine when it's "necessary or desirable" for the Agency to require this and that "It was the experience of the DAEO that the benefits gained from processing, reviewing and responding to such requests did not justify the substantial cost in staff time involved."

- SBA officials believe that notification of NWBC status should be disseminated to Management Board members rather than the entire Agency.
- In response to appointing a senior SBA official to monitor NWBC compliance with laws and regulations pertaining to administrative matters, NWBC stated "that oversight should be administrative in nature and should not interfere with the independent, advisory status of the Council."

NWBC's and SBA Management's responses are included as *Appendices C* and *D*, respectively.

***OIG Evaluation of NWBC and SBA Management's Response:***

The recommendations that NWBC and SBA Management advised have already been implemented, *Recommendations 1B* and *1C*, will remain in the audit report, and will be considered implemented when NWBC and SBA Management provide supporting documentation, e.g., a Procedural Notice stating that NWBC's Executive Director and Program Manager are required to file confidential financial disclosure reports. Based on the statements by the current Executive Director and SBA Management that NWBC employees have received Ethics training and future employees will also receive it, we consider *Recommendation 1C* to be implemented. We deleted the recommendation requiring SBA employees to obtain prior approval before seeking outside employment from the final report. We will leave it to the DAEO's discretion as to whether SBA employees must obtain prior approval before seeking outside employment. We revised *Recommendation 1A* to address the notification of NWBC status to Management Board members and employees in affected offices, rather than recommending that all SBA employees be notified. We included employees in affected offices because we believe that it is important to ensure that these employees are officially notified of NWBC's status, and not assume that Management Board members will inform them. Our recommendation concerning a senior SBA official monitoring NWBC compliance with administrative matters remains limited to administrative matters and, if implemented as written, should not interfere with the independent, advisory status of the Council.

***Executive Director and Program Manager's Response:***

In a joint response, the Executive Director and Program Manager stated that ethics regulations appear not to have applied to them since there was a long-standing understanding, shared by the SBA itself, that NWBC employees were not SBA employees and that NWBC was a non-SBA entity. They stated that even if ethics regulations applied, the audit ignored the interrelationship between the work of the Council and the development, and ultimate launch of Springboard Enterprises as a separate non-profit organization. They noted that NWBC's role is

to develop and promote new initiatives, policies, programs, and plans designed to foster women's business enterprise, and described how the Springboard forums fit this role. They claimed that SBE was not given an unfair competitive advantage. They also claimed that their time working on Springboard forums did not conflict with their official duties, but rather, it was very much part of their official duties. Their response is included as *Appendix F*.

***OIG Evaluation of Executive Director and Program Manager's Response:***

While there was confusion as to whether the Executive Director and Program Manager were SBA employees, it was clear that they were Federal Government employees. The Government Ethics Regulations apply to Federal Government employees, not just SBA employees. To avoid any confusion, we revised the report to emphasize that the Executive Director and Program Manager were Federal Government employees. We disagree that their work on the Springboard forums did not conflict with their official duties, and the finding discusses the details of why we believe that. Although we agree that Springboard forums met the mission of NWBC, it was inappropriate for the Executive Director and Program Manager to work for NWBC and SBE at the same time. The Executive Director and Program Manager had a financial interest in SBE, therefore, they were prohibited from continuing to serve in their NWBC roles since they did not give up their financial interest in SBE. We maintain that SBE, an organization developed and controlled by the Executive Director, received unfair competitive advantage as referenced in the finding. Both the Executive Director and Program Manager found gainful employment at SBE when they decided to leave NWBC.

***SBE's Response:***

The response from SBE explained that as plans were being made to incorporate Springboard Enterprises, Council members were kept informed at every turn and that Council members were encouraging and supportive, providing valuable guidance along the way. The response indicated that SBE was not given an unfair competitive advantage. SBE's response is included as *Appendix E*.

***OIG Evaluation of SBE's Response:***

Even if Council members were kept informed, the former NWBC Executive Director and Program Manager were still bound by Ethics regulations. In addition, we disagree that Council members were kept informed at every turn. The minutes show that Council members were informed of important facts after the fact. For example, the notification about spinning off Springboard surfaced on October 4, 2000, after SBE was already incorporated on September 15, 2000.

## Finding 2: NWBC Entered Into Inappropriate Agreements

NWBC inappropriately entered into numerous agreements and arrangements with external private entities that violated the Federal Acquisition Regulations (FAR), appropriations law, the Small Business Act and the CFR. These violations could have been avoided if OPGM ensured that NWBC procurement awards conformed to applicable procurement regulations. OPGM officials believed that NWBC was not part of SBA and, as a result, did not believe that they were required to ensure compliance with applicable procurement regulations when processing records for NWBC. This resulted in the Government providing financial benefits to individuals and organizations without fair and open competition, in violation of Federal laws. Violations we identified are discussed below (See *Appendix A* for specific details):

Informal Agreements and Co-Hosting Arrangements - NWBC co-hosted six Springboard forums with non-profit organizations without entering into contracts detailing each party's responsibilities and how costs and proceeds were to be shared. Since NWBC (1) co-hosted the forums, (2) allowed its name, appropriated funds, and staff resources to be used to promote and conduct the forums; and (3) engaged in fundraising for some of the forums, the forums were Government sponsored events. Under the Miscellaneous Receipts statute, 31 U.S.C. § 3302 (b), money received for the use of the Government must be deposited in the general funds of the Treasury. NWBC needs to ensure compliance with OMB Circular A-122, *Cost Principles for Non-Profit Organizations*, which states that the Federal Government should bear its fair share of costs. Based on records maintained by NWBC and those submitted by SBE and other co-hosts, SBE received \$323,067<sup>3</sup> from five Springboard forums, \$63,000 of which came from the Mid-Atlantic forum (see next paragraph for discussion). [exemption 4] received approximately \$319,301<sup>3</sup> from two Springboard forums. NWBC did not receive any proceeds to offset its costs. Since the Springboard forums were NWBC initiatives and there were no signed contracts between NWBC and the non-profit organizations detailing how revenues and expenses were to be shared, the amounts received by various organizations were unsupported and do not appear justified.

### Proceeds Received by Forum Participants

Forum	SBE	[exemption 4]	TOTAL
Silicon Valley I & II	\$24,607	\$319,301	<b>\$343,908</b>
Mid-Atlantic	\$63,000		<b>\$63,000</b>
New England	\$25,000		<b>\$25,000</b>
New York	\$168,775		<b>\$168,775</b>
Mid-West	\$41,685		<b>\$41,685</b>
<b>TOTAL</b>	<b>\$323,067</b>	<b>\$319,301</b>	<b>\$642,368</b>

SBE inappropriately received the \$63,000 in leftover proceeds from the Mid-Atlantic forum, an event SBE did not participate in, as the forum was held two months prior to SBE's

<sup>3</sup> The leftover proceeds (revenues less claimed expenses) were calculated using unaudited financial records submitted by SBE and [exemption 4] and records maintained by NWBC. Overhead costs incurred by these organizations were not included in this calculation since the information was not developed by these organizations.



incorporation. The Executive Director stated she deposited the \$63,000 with SBE as “seed money” since SBE would continue the forums, and the Government would not have to pay for future forums. These funds, however, should not have been transferred to SBE since they were ultimately Government funds. The Mid-Atlantic forum was a Government-sponsored event; the proceeds from that event were funds collected for the use of the Government, which should have been deposited in the U.S. Treasury’s General Funds as “miscellaneous receipts.” Forum proceeds came from contributions made by forum sponsors and registration fees collected from forum presenters and attendees. Consideration was given for sponsor contributions, such as advertising for sponsoring organizations, so the contributions do not meet the definition of a gift and could not be accepted, retained, or used by NWBC or its agent pursuant to NWBC’s gift authority. Since NWBC lacks authority to co-sponsor events with other entities, the contributions could not be received, retained, or used based on such authority. As funds were collected from outside sources for the use of the Government, they should have been deposited into the Treasury’s “miscellaneous receipts” account. NWBC also lacked the authority to collect, retain, or use registration fees; accordingly, the registration fees should properly have been deposited in that Treasury account.

Improper Sole Source Contracts - NWBC awarded 13 contracts totaling \$320,500, using boiler-plate template justifications for sole source contracts. However, the justifications used did not apply to the contracts, and the required documentation demonstrating that it did apply was not prepared and documented in the contracting files. Listed below are the boiler-template justifications used by NWBC for all of its sole source awards, and why they did not apply:

- “The required items or services are a follow-on contract for the continued development or production of a major system or highly specialized item, including major components thereof and the award to any other source would result in substantial duplication of cost that is not expected to be recovered through competition.” The items or services were not follow-on contracts. They were not for the continued development or production of a major system or highly specialized item, but rather they were for such things as research projects and sponsorships for conferences.
- “The acceptance of an unsolicited research proposal for supplies or services that demonstrates a unique and innovative concept, the substance of which . . . is not otherwise available to the Government.” There was no indication that any proposals were unsolicited and that the supplies or services were unique and innovative and not otherwise available to the Government. Since many of these were research projects, we believe that they could have been conducted by a multitude of research organizations.
- “The item or service is of an unusual and compelling urgency.” If this reason is cited, an explanation of how the Agency would be seriously injured by limiting full and open competition is required. The form states “Lack of advance planning does not allow this exception to be used.” Any compelling urgency appears to be due to a lack of planning. The Executive Director claimed that the contracts were considered urgent since the contracts had to be awarded within the fiscal year or the funding would expire.

FAR 3.101 requires Government business to be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. The general rule is to strictly avoid any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. NWBC violated the FAR by steering contracts to selected organizations without valid sole source justifications, and OPGM routinely processed the contracts without reviewing the details or questioning the appropriateness of the justifications.

On one of the improper sole source contracts, NWBC paid an organization \$10,500 to produce the draft of a handbook, though the real purpose of the payment appears to have been to pay off the remaining debt that organization incurred from sponsoring a conference. Although NWBC did not have a legal liability for the debt, NWBC awarded the \$10,500 sole source contract about one year after the conclusion of the conference, after receiving a letter from the conference center requesting payment of \$10,500 for the debt. NWBC officials were unaware of this draft handbook and no one has inquired about it, making it questionable whether such a handbook was necessary to accomplish the mission of the Agency. Since the Executive Director stated that she received the draft and left it at the NWBC when she resigned, we did not make any recommendation related to this contract.

Improper Co-sponsorship-type Arrangements - NWBC entered into three arrangements which the agreement identified as co-sponsorships, totaling \$55,000 in Government funds, although NWBC does not have co-sponsorship authority. The Small Business Act gives SBA authority to co-sponsor training and counseling programs to assist small business, however, this co-sponsorship authority does not extend to NWBC.

Improper Award of Government Funds Through De Facto Grants - NWBC awarded four de facto grants totaling \$110,000 in Government funds although it did not have grant-making authority. These were de facto grants because they fit the definition of a grant under appropriations law, i.e., the award benefited a public purpose rather than providing goods or services to the Government. In some instances, the term “grant” was used in the award documentation. According to the General Accounting Office (GAO), there is no “inherent authority to give away the Government’s money or property, either directly or by the release of vested right, to benefit someone other than the Government.”

Contracts Not Set Aside for Small Businesses - NWBC awarded 15 contracts totaling \$355,500 to non-profit organizations. Such contracts, which ranged in size from \$10,000 to \$50,000, should have been reserved for small businesses. FAR 19.502-2 requires contracts valued between \$2,500 and \$100,000 to be reserved exclusively for small business concerns unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. Title 13 CFR §121.105 defines small businesses as business entities organized for profit. The contracting officer did not document that these requirements were followed. The Executive Director stated that she did not know that small businesses did not include non-profit organizations.

Executive Director Improperly Obligated the Government - The Executive Director entered into 12 contracts totaling \$295,500 although she was not a warranted contracting officer. FAR 1.601, stipulates that only authorized contracting officers may enter into and sign contracts on behalf of the Government. Contracting officers in OPGM later ratified these contracts, but they did so without adhering to the requirements of FAR 1.602.3. In order to properly ratify the unauthorized obligations created by the Executive Director, the contracting officer needed to obtain legal counsel's concurrence, but this approval was by-passed.

In addition to the above, NWBC paid \$25,000 in FY 1999 and another \$25,000 in FY 2000 to [exemption 4] although [exemption 4] did not fully meet the contract requirements for each of these two years. Specifically, [exemption 4] failed to provide the required case studies in both years, although the contracts required the studies. In FY 2001, [exemption 4] submitted a third requisition for \$10,000 to continue the same project. [exemption 4] produced a four-page draft and attempted to collect the \$10,000 from NWBC. By this time, the acting Executive Director was appointed to NWBC. She rejected the deliverable because it did not meet the contract terms and recommended that SBA not pay [exemption 4] the final \$10,000. [exemption 4] has subsequently performed additional work and submitted a report related to the FY 2001 contract, which we did not review as part of the audit.

Most of these violations could have been avoided if OPGM ensured that NWBC awards conformed to applicable procurement regulations. In the past, OPGM entered into an informal agreement with NWBC whereby OPGM would process NWBC's awards. OPGM officials understanding of the agreement was that since NWBC was not part of SBA, OPGM would simply process the contracts without ensuring conformance with applicable procurement regulations. Regardless of whether NWBC was part of SBA, OPGM contracting officers should have ensured that Federal procurement regulations were followed on every procurement they processed. Contracting officers are responsible for ensuring that awards conform to applicable procurement regulations.

SBE was unjustly enriched by receiving \$63,000 in leftover forum proceeds generated prior to its incorporation. The undocumented arrangements whereby forum co-hosts received leftover proceeds provided the co-hosts financial benefits without sufficient accountability and justification. The Government was denied its fair share of the leftover proceeds despite its considerable contributions to their success. As a result of NWBC's inappropriate agreements, legitimate businesses, including women-owned businesses, were excluded from contracting opportunities.

## **Recommendations**

We recommend that the current Executive Director:

- 2A. Require SBE and [exemption 4] to provide justification for receiving \$579,368 from the Silicon Valley I and II, New England, New York and Mid-West forums based on estimated expenses incurred. After reviewing the justification, determine whether any income in excess of expenses should be recovered. If a determination to seek recovery is

made, ensure that the Chief Financial Officer recovers the funds from the responsible party or parties.

- 2B. Ensure that NWBC members and staff receive written guidance and training from OGC on appropriations law dealing with the distinctions between contracts, grants, and cooperative agreements and notification that NWBC does not have grant and co-sponsorship authority.

We recommend that the Chief Financial Officer:

- 2C. Recover \$50,000 from [exemption 4] for not producing the required deliverables in FYs 1999 and 2000.
- 2D. Recover \$63,000 from SBE for the Mid-Atlantic forum proceeds it received.

***NWBC and SBA Management's Response:***

NWBC's Executive Director disagreed that NWBC should seek additional information or justifications from third parties who received leftover proceeds from the various Springboard forums, with the exception of SBE. She stated that NWBC does not have the expertise and, if important, the auditors should have requested that information. NWBC's Executive Director also believed that third parties should not be held accountable for the former Executive Director's misdeeds.

SBA Management stated that it was appropriate for OGC rather than OPGM to provide NWBC written guidance and training on appropriations law. SBA Management also stated that it was appropriate for all recommendations related to recovery of funds to be addressed to OGC rather than the CFO and that decisions to seek recovery were not justified until OGC determines that recovery is legally supportable, SBA reviews its legal options and makes a final determination as to how to proceed.

***OIG Evaluation of NWBC and SBA Management's Response:***

NWBC's Executive Director did not provide a legal basis for disagreeing to require co-hosts to provide justification for taking leftover proceeds. NWBC needs to review the justifications to ensure compliance with OMB Circular A-122. Under this Circular, the Federal Government is to bear its fair share of costs when working with non-profit organizations. We revised *Recommendation 2B* to require NWBC members and staff to receive training on appropriations law from OGC rather than OPGM. We believe that the recommendations related to recovery of funds should be addressed to the CFO since the CFO Act requires the CFO to oversee all financial management activities relating to the programs and operations of the Agency. The CFO may request OGC to review the documentation and help ascertain whether recovery is supportable.

***SBE Response:***

SBE stated that Springboard forums were made possible by efforts of private organizations and that the proceeds from the forums were not Government funds. They claimed that although NWBC had a role in organizing and supporting the Springboard forums, the OIG has misunderstood and overstated NWBC's role. They stated that the forums were not a Government program and the Government did not have a proprietary interest in them just because NWBC collaborated on them. As such, they took "strong exception" to the assumption that when NWBC provided some funding for a forum, that the forum proceeds were "Government funds." SBE also stated that our assertion that the Government has been "denied its fair share" and that the Government is entitled to a certain portion of the forum proceeds is not supported by citation to legal authority and is wholly inconsistent with NWBC's mission. SBE disagreed that it inappropriately received \$63,000 in leftover proceeds from the Mid-Atlantic forum stating this conclusion rests on the misguided premise that Springboard forums were created by and for NWBC, and that NWBC expected or should have received a financial return on its investment in the Springboard forums. They disagreed that SBE was unjustly enriched by receiving this \$63,000, stating "Although . . . [SBE] was incorporated after the Mid-Atlantic Forum, the transition of responsibility for the Springboard forums to a separate non-profit was simply the next stage in the evolution of the Springboard concept." Lastly, they objected to the suggestion that SBE and other co-hosts should be required to justify their retention of certain proceeds from the Springboard forums. They base this claim on the premise that NWBC has no legitimate claim to these funds.

***OIG Evaluation of SBE Response:***

Although private organizations played a role in funding and providing support for the forums, the Executive Director and Program Manager, both NWBC employees, organized and managed the forums for NWBC. We are not implying that NWBC should make a profit from Springboard forums. Rather, if there were proceeds left over from the forums, it should be used to offset costs, including those incurred by NWBC. We stand by our analysis contained in the body of this finding that the \$63,000 in leftover proceeds from the Mid-Atlantic forum are Government funds, and there is no legal basis for their transfer to SBE. We added references to the Miscellaneous Receipts statute and OMB Circular A-122 in the body of the report to provide legal authority for our conclusion and recommendations.

***Executive Director and Program Manager's Response:***

The response from the Executive Director and Program Manager stated that the second finding suggests that NWBC's core business practices violated numerous procurement regulations and that the audit ignored the fact that many of NWBC's business practices – including co-sponsorship arrangements, grants, and sole-sourced contracts – were consistent with Congress' intent to promote new initiatives, policies, programs, and plans designed to foster women's business enterprise. The response also stated that it was arbitrary and unfair to fault NWBC for its contracting practices since OPGM abdicated responsibility over NWBC contracts.

***OIG Evaluation of Executive Director and Program Manager's Response:***

We don't fault NWBC's efforts to develop and promote new initiatives, policies, programs, and plans designed to foster women's business enterprise. Instead, we fault NWBC for not adhering to Federal procurement regulations. NWBC does not have grant and co-sponsorship authority. Also, sole source contracts can only be awarded with valid justifications. We reported the facts, which were NWBC inappropriately entered into agreements and arrangements. We also stated that these violations could have been avoided if OPGM ensured that NWBC awards conformed to applicable procurement regulations.

***[exemption 4] Responses:***

[exemption 4] claimed that it has justified its expenses and [exemption 4] provided additional records to show that its Springboard forum expenses exceeded its revenues. [exemption 4] also claimed that it met all the contract requirements related to the FY 1999 and FY 2000 contracts, therefore it should not be required to repay NWBC \$50,000.

***OIG Evaluation of [exemption 4] Response:***

We re-analyzed information submitted by [exemption 4] and analyzed the new records submitted by [exemption 4] related to the costs associated with the activities to carry out the New England and Mid-West Springboard forums, respectively. We determined that their expenses, including overhead, exceeded their revenues. As a result, we deleted the audit finding and recommendation related to [exemption 4] as it relates to Springboard forums. We still maintain that [exemption 4] did not meet all the contract requirements related to the FY 1999 and FY 2000 contracts. Specifically, [exemption 4] failed to provide the required case studies for these two years, and as a result, they should be required to reimburse NWBC.

### **Finding 3: Violations of Federal Travel Regulations and SBA Travel Policy**

NWBC officials violated the Federal Travel Regulations (FTR), SBA travel policy and OMB Circular A-123. Inappropriate vouchers were paid because OCFO officials provided insufficient oversight of NWBC's travel expenses. The Executive Director was allowed to self-authorize her travel without oversight, which contributed to some of the travel abuses. As a result, the Government paid \$70,767.47 [\$1,378.35 (see below under Daughter's Personal Travel) + \$69,389.12 (see Travel Expenses to be Recovered in *Appendix B*)] in inappropriate and unallowable travel expenses.<sup>4</sup>

The Executive Director improperly approved or authorized six trips (she approved her own travel and had her subordinate sign as the authorizing official) that were unrelated to accomplishing the mission of the Government. FTR §301-70.1 and §301-71.101 limits the authorization and payment of travel to the amount that is necessary to accomplish the mission of the Government. Also, SBA travel policy (SOP 20 11 4, *Travel*) permits only those travel expenses that are necessary to accomplish the purposes of the Agency. See below for improper authorizations for travel that did not comply with the FTR.

Daughter's Personal Travel - The Executive Director improperly authorized invitational travel for her daughter to accompany her on trips to Paris and San Francisco at Government expense and using Government rates. The total cost to the Government for her daughter's travel was \$1,378.35. The Executive Director's daughter did not have a role in helping NWBC accomplish the mission of NWBC on these two trips. Besides being unrelated to accomplishing the mission of the Agency, the Executive Director did not have authority to authorize foreign travel (see Improper Authorization for Foreign Travel below.) As a result of the OIG questioning these trips, SBA withheld \$1,378.35 from the Executive Director's final paycheck.

Weekend Staff Meeting Held in Las Vegas to Coincide with a Wedding - Three NWBC staff members traveled to Las Vegas, Nevada, to attend a Saturday staff meeting that was purposely planned to coincide with the wedding of a fourth NWBC staff member. This weekend trip cost the Government \$3,000.04. The Federal Managers' Financial Integrity Act of 1982 (FMFIA) and OMB Circular A-123, "Management Accountability and Control," require appropriate measures to ensure that Government funds are safeguarded against such things as waste and mismanagement. NWBC wasted and mismanaged Government funds by having a staff meeting in Las Vegas when the staff's official duty station was in Washington, D.C. This was the only instance where NWBC held a weekend staff meeting as well as the only instance where one was held outside its Washington, D.C. office location. The staff meeting could have been held without traveling to Las Vegas, making the travel unnecessary in accomplishing NWBC's mission.

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<sup>4</sup> Although some Government-paid trips violated more than one Federal travel regulation, we are only questioning expenses for those trips once. As such, amounts discussed in the various sections under this finding total more than \$70,767.47.

SBE Staff Travel - The Executive Director used \$517.36 in Government funds to attend a “Springboard Enterprise Board Retreat” in Boston. According to the retreat agenda, the purpose of the retreat was to discuss issues related to SBE. Discussing SBE related matters is not official business related to accomplishing the purpose of SBA or NWBC.

NWBC also incurred the following unallowable travel expenses:

Inappropriate Use of Reduced Government Airfares - In 15 instances, the Executive Director improperly authorized invitational travel letters for personal travel totaling \$7,297.26. The travelers reimbursed NWBC for the trips, and NWBC deposited them into the BATF (see finding 4). FTR § 301-10.110 prohibits using Government airfares for personal travel.

Official Station Lodging Expense - On five occasions, NWBC paid a total of \$5,653.17 for staff lodging at Washington, DC hotels although the staff’s official station was in that same city. FTR § 301-11.1 allows payment of per diem or actual expense only when one performs official travel away from one’s official station or other areas defined by one’s Agency. FTR § 300-3.1 defines the geographic limits of the official station as the corporate limits of the city or town where stationed. On one of these occasions, the Executive Director obtained two nights lodging in a luxury suite in Washington, DC, costing \$2,931.20. In addition to this being a non-travel situation within the geographic limits of one’s official station, this charge exceeded the \$115/night maximum lodging rate set forth in the FTR in Washington, DC by \$1,350.60 per night.

Unallowable Conference Travel – One hundred travel authorizations to attend conferences, totaling \$68,755.94, were either unsigned by an authorizing official or authorized after completion of the travel. FTR §§ 301-2.1 and 2.5 stipulate that “. . . written or electronic advance authorization is required . . .” to incur travel expenses related to attendance at a conference.

Lodging Expense in Excess of Per Diem - From January 1999 through April 2001, NWBC staff incurred 33 lodging expenses that exceeded the maximum amount allowed by the Government by \$12,163.33. According to the FTR and SBA policy, lodging expenses should be within Government maximum lodging allowances as published by the U.S. General Services Administration (for domestic travel) and the U.S. State Department (for foreign travel) unless authorization is obtained to pay actual expenses. No explanations were documented in the files to justify these overcharges or to pay actual expenses.

Lack of Vouchers for Invitational Travel - NWBC paid for invitational travel but did not require the travelers to submit travel vouchers and receipts to support the travel. The invitational letter, without any further documentation, served as both the travel authorization and the voucher for claimed expenses. According to the FTR §§301-52.2 to 52.5 and SOP 20 11 4, a voucher is required even when a Government Travel System (GTS) account is used and there is no claim for reimbursement by the traveler. NWBC should have assisted travelers in preparing their vouchers as required. Moreover, the SOP requires that lodging receipts be submitted as supporting documentation. Without the voucher and supporting documentation, it is impossible



to get a breakdown of expenses incurred or to verify that the Government invitational travel actually took place on the date(s) specified. Due to deficiencies in SBA's and NWBC's accounting records for NWBC travel, we could not determine the total dollar amount of NWBC paid invitational travel that lacked supporting documentation and vouchers.

Improper Authorizations for Foreign Travel - The Executive Director traveled to three foreign countries and issued invitational travel to her daughter and an NWBC contract employee for their travel to France. None of these trips were authorized by the Administrator, Deputy Administrator, or the Associate Deputy Administrator for Management and Administration, though required by SOP 20 11 4, *Travel*. Instead, the Executive Director's subordinate signed the travel authorizations for the Executive Director's foreign travel, and the Executive Director authorized invitational travel for her daughter and an NWBC contract employee. The Executive Director's trips cost the Government \$7,271.15, and the travel costs of her daughter and the NWBC contract employee amounted to an additional \$2,508.16. SBA withheld the travel costs for the Executive Director's daughter's travel to France from the Executive Director's final paycheck (see Daughter's Personal Travel above). Since the Executive Director was unaware that NWBC staff were SBA employees, we did not question these travel costs based solely on lack of authorization by the Administrator, Deputy Administrator, or the Associate Deputy Administrator for Management and Administration. OGC, however, should determine whether the travelers are liable under these circumstances.

Some of these travel violations could have been avoided if OCFO officials provided adequate oversight over NWBC's travel expenses. Also, the Executive Director self-authorized her travel without oversight, which contributed to some of the above travel abuses. NWBC paid \$70,767.47 in inappropriate and unallowable travel expenses.

## **Recommendations**

We recommend that the current Executive Director:

- 3A. Take the necessary steps to ensure that all NWBC employees are knowledgeable about the relevant travel regulations.
- 3B. Ensure that travel vouchers are completed and supporting documentation maintained to support all future invitational travel.

We recommend that the General Counsel:

- 3C. Determine whether travelers are liable for the cost of their foreign travel if the authorization violates SBA's Travel SOP, but SBA and the travelers mistakenly believed that the travelers did not have to comply with the Travel SOP.

We recommend that the Chief Financial Officer:

- 3D. Recover \$69,389.12 from appropriate parties for improperly authorized travel that has not yet been recovered.

- 3E. Recover from the responsible individual(s) any funds due the Government, based on the determination the General Counsel makes in implementing Recommendation 3C.
- 3F. Incorporate provisions in SBA's travel SOP requiring the current Executive Director to obtain prior written authorization for her travels from the person whom SBA will identify in response to recommendation 1A.

***NWBC and SBA Management's Response:***

NWBC and SBA Management generally agreed with the recommendations under *Finding 3*. NWBC's Executive Director stated that NWBC already implemented *Recommendations 3A and 3B* and as such, believed these recommendations should not be included in the final report. SBA Management assumed that OIG's reference to "SBA regulations" in *Recommendation 3C* referred to the FTR since SBA does not have its own travel regulations. Management also restated that recommendations related to recovery of funds should be addressed to OGC rather than the CFO.

***OIG Evaluation of NWBC and SBA Management's Response:***

We revised *Recommendation 3C* to read "SBA's Travel SOP" rather than "SBA regulations." The recommendations that Management claimed have already been implemented will remain in the audit report, and will be considered implemented when Management provides supporting documentation. We believe that the recommendations related to recovery of funds should be addressed to the CFO since the CFO Act requires the CFO to oversee all financial management activities relating to the programs and operations of the Agency.

***Executive Director and Program Manager's Response:***

The Executive Director and Program Manager claimed that they know of no legal basis for the OIG to recommend recovering travel reimbursements that have already been processed and paid by SBA. They believe that it is "grossly unfair" for the Government to try to charge them, years after the fact, for incurred travel expenses that advanced NWBC's mission. They stated that it is not clear whether the FTR applies to NWBC, citing the definition of "Executive Agency" contained in 5 U.S.C. §101. They do not believe that they should be required to reimburse NWBC based on SBA travel policy, as distinct from the FTR, since both NWBC and SBA treated NWBC as a non-SBA entity. They believe that the Executive Director's daughter's Government paid travels should not be included in the report since the Executive Director promptly corrected this matter and made full payment to SBA, i.e., the funds were withheld from the Executive Director's final Government paycheck. They stated that the OIG disapproval of the Las Vegas trip ignored the fact that extensive Council business was conducted on that trip, and as such, it was unfair to conclude NWBC "wasted and mismanaged Government funds." They also noted that the OIG unfairly characterized the trip to Massachusetts by placing undue emphasis on the written agenda and disregarding the Executive Director's oral accounting of what transpired at the meeting. They claimed that they were not liable for the overages related to lodging expenses in excess of per diem since they were simply complying with the travel

preferences of the council members. They also objected to the recommendation to recover funds based on post-dated or unauthorized conference travel since they believed these were simply paperwork errors. They stated that they relied on NWBC's [exemption 6] to know the travel regulations and to submit the appropriate paperwork. They claimed that the [exemption 6] made paperwork errors. They also faulted SBA for continuing to pay for NWBC's travels over time without questioning its practices.

***OIG Evaluation of Executive Director and Program Manager's Response:***

We based our recommendation to seek recovery using the FTR as our criteria, not SBA's Travel SOP. When we find inappropriate travel that violates the FTR, we report those instances and require the Agency to take action to recover the funds they inappropriately paid the traveler. In questioning whether the FTR applies to NWBC, these individuals cited an incorrect reference, 5 U.S.C. § 101, to define who is covered by the FTR, rather than 5 U.S.C. § 105, which is cited in the FTR. According to 5 U.S.C. § 105, an Executive agency includes an Executive department as well as an independent establishment, which would include NWBC whether or not they were part of SBA. We cite NWBC paying for the Executive Director's daughter's travel since these payments are included within the audit scope and SBA withheld payment from the Executive Director's final paycheck for these expenses as a result of this audit. We did not ignore the Executive Director's assertion that NWBC staff conducted Council business in Las Vegas. We concluded NWBC wasted and mismanaged Government funds by paying for staff that worked in the same Washington, DC suite to fly from Washington to Las Vegas and back again for a Saturday staff meeting, planned to coincide with a co-worker's wedding. The meeting should have been held in Washington, like all the other staff meetings that the office held. As for the Massachusetts trip, we used the meeting agenda, which helped us to understand why these two individuals took the trip. The document clearly showed that the intended purpose of the trip was to attend SBE's Board meeting. We consider it a more accurate description of what was supposed to be covered at the time the reservation was made.

We maintain that the Executive Director and Program Manager are responsible for overages in per diem lodging, as they did not comply with the FTR. While lodging in excess of per diem can be authorized, it was not. Council Members cannot dictate or force Government employees to violate the FTR. The FTR is clear in stating that all conference travel needs to be pre-authorized in advance. Although the [exemption 6] helped prepare the paperwork and submitted it for payment, the traveler is required to ensure all travel expenses are prudent and necessary and submit the expenses in the form of a proper claim.

#### **Finding 4: Improper Use of NWBC's Business Assistance Trust Fund**

NWBC entered into a series of questionable transactions that transferred what should have been appropriated funds into the Business Assistance Trust Fund (BATF), an account used to receive funds from non-appropriated sources, e.g., gifts. Some of these funds were later used to pay for an expense prohibited by appropriations law. This occurred because SBA's internal controls to detect and prevent such abuse were lacking or ineffective. As a result, almost \$1,700 in appropriated funds were used for a prohibited purpose.

Inappropriate Deposit of Funds into the BATF - When travelers reimbursed NWBC \$7,297.26 for personal travel that was paid for by NWBC (see *Inappropriate Use of Reduced Government Airfares* in **Finding 3**), NWBC deposited the checks into the BATF where some of it was later used to pay for catering expenses at a reception in honor of the Executive Director (see below). The Executive Director issued the invitational travel letters for the personal travel and approved the practice of reimbursing the BATF. NWBC should not have used appropriated funds to pay for personal travel and should not have deposited repayments of appropriated funds into the BATF. NWBC used inappropriate travel transactions to convert appropriated funds into non-appropriated funds where it was reimbursed back into the BATF.

Unallowable reception for the Executive Director - NWBC collected and deposited \$4,700 into the BATF to hold a reception in honor of the Executive Director while she was still serving in her official position as Executive Director. However, the cost of this event totaled \$6,382.30, and NWBC used BATF funds to pay the entire cost of the reception, requiring the BATF to cover the \$1,682.30 deficit. The Executive Director was responsible for depositing travel reimbursements into the BATF and for authorizing expenses from this account. Through travel reimbursement transactions (described above), appropriated funds were deposited into the BATF where they were used for an unallowable expenditure. Generally, appropriated funds are available to carry out the mission of an Agency and, absent specific authority, not for such things as private receptions. NWBC does not have specific authority to use appropriated funds to hold private receptions.

The misuse of the BATF occurred because SBA's internal controls to detect and prevent such abuse were lacking or ineffective. OCFO officials processed all the BATF transactions that were approved by the Executive Director without questioning any transactions. Also, SBA did not provide any official guidance about the proper use of the BATF. SOP 20 14 (Draft), *Funds Received from Non-Appropriated Sources*, which could provide the necessary guidance, has been in draft for several years. The Executive Director stated that she had little or no training on the proper use of the BATF.

#### **Recommendations**

We recommend that the Chief Financial Officer:

- 4A. Transfer the remaining balance of \$2,375.83 from NWBC's BATF account to the appropriate SBA travel account.

- 4B. Recover \$1,682.30 from the Executive Director to cover the shortfall in the BATF resulting from the reception held in her honor.
- 4C. Finalize SOP 20 14, *Funds Received from Non-appropriated Sources*, to provide clear guidance on the proper use of the BATF.
- 4D. Provide training and written guidance to OCFO employee(s) to ensure that BATF transactions are reviewed (both deposits and expenses) for propriety and that any suspicious transactions are reported to his/her supervisor for proper action.

***SBA Management's Response:***

SBA Management generally agreed with the recommendations under *Finding 4*, except that they believed that all recoveries should be addressed to OGC rather than the CFO and that recoveries are not justified until OGC reviews the information. (See Management's response and OIG evaluation under *Finding 2*.)

***OIG Evaluation of SBA Management's Response:***

Management was receptive to the audit finding and recommendations. See *OIG Evaluation of NWBC and SBA Management's Response* under *Finding 2* for discussion on recovery issues.

***Executive Director and Program Manager's Response:***

The response from the Executive Director and Program Manager stated that we double-counted the amount of BATF funds that the Executive Director should remit to SBA and that there is no allegation of misuse of the BATF other than \$1,682.30 of the funds used for the farewell reception. They also claimed that there is no justification for requiring the Executive Director to be personally liable for travel expenses incurred by others and for expenses incurred for her reception. They stated that the Executive Director did not receive training concerning use of the BATF and SBA provided no oversight. Lastly, they claimed that the Executive Director delegated management of the BATF to her subordinates and she believed that the BATF could be used for catering.

***OIG Evaluation of Executive Director and Program Manager's Response:***

We revised the finding and *Recommendation 4B* to correct the double counting, limit the recovery of funds to the farewell reception, and add the Executive Director's statement that she received little or no training on the proper use of the BATF. Although she may not have been familiar with details of BATF operation, she is liable for signing inappropriate Government travel authorizations for personal travel, receiving reimbursement for this personal travel, and allowing it to be deposited into the BATF and used for other purposes. Whether or not she thought catering was appropriate use of the BATF, she is ultimately responsible for misusing the Government's BATF for personal purposes. The report does not allege that the Executive Director misused all of the funds in question. The only OIG conclusion of misuse concerns the funds used to pay for the reception in excess of those funds collected and deposited in the BATF by NWBC.

## **Finding 5: Other Inappropriate Activities**

The Executive Director did not follow and did not ensure that NWBC staff followed applicable laws and Government-wide and SBA regulations. SBA did not ensure NWBC complied with the laws and regulations. Specifically, (1) NWBC employees received cash awards that were either not approved or improperly approved, (2) NWBC used the NWBC purchase card for inappropriate purchases, (3) NWBC's [exemption 6] and her spouse made numerous personal calls on a Government issued cellular phone, (4) an NWBC staff member drafted and distributed lobbying letters, (5) an individual served on NWBC without appointment, and (6) NWBC failed to submit one required annual report to the President and Congress and submitted a second one late. As a result, inappropriate payments were made, and the President and Congress received untimely or no information about NWBC's activities.

**Improper Cash Awards** – The Program Manager improperly received a \$10,000 cash award in the form of a consulting fee. This award was processed outside of the Government's accounting system, thus bypassing Government controls. Additionally, the Executive Director and other NWBC staff received cash awards totaling \$11,400, processed using SBA forms, but not conforming to SBA procedures. NWBC did not have the authority to independently provide cash awards to its employees since it did not have its own awards program. If awarded through the SBA Employee Recognition Program, these awards would still have been inappropriate, since they were not approved by the required approving officials. SBA officials were not able to raise questions about the Program Manager's \$10,000 award since it was not processed through SBA. The OHCM processed the remaining awards to the Executive Director and NWBC staff without ensuring proper approval was obtained because they believed that NWBC was not part of SBA. Regardless of whether NWBC members are bound by SBA procedures, OHCM staff processing cash awards should have ensured that Government-wide regulations were followed.

The Program Manager improperly received \$10,000 from the Springboard Mid-Atlantic forum proceeds. The payment was made based on an invoice for "consulting fees" with a notation that the \$10,000 check be made payable to the Program Manager. According to the Executive Director, representatives from other organizations who also supported the Springboard Mid-Atlantic decided to give the Program Manager the funds to thank her for a job well done. She stated that the Program Manager worked extra hours on evenings and weekends to make the forum a success. Since the forum proceeds were Government funds, this consulting fee was actually a performance award to a Government employee. The Administrator did not approve the award, as required for an award of this magnitude under SBA's award program. This award also was not documented in the Program Manager's official personnel folder, as it should have been according to Title 5 CFR.

The Executive Director determined her own special act or service awards (Cash Awards) and received one improperly approved and two unapproved awards totaling \$5,900. These awards were for \$2,500, \$2,200 and \$1,200. The NWBC Chairwoman, who was not a Government employee, signed the *Recommendation for Cash Award Form* (SBA Form 595) as the Executive Director's supervisor for two of the awards, and as the approving official for the third award. The Executive Director and the NWBC Chairwoman signed the justification for two of the awards.

Three cash awards to NWBC staff for \$1,000 each, and another for \$2,500, should not have been approved by the Executive Director. NWBC does not have its own awards program separate from SBA's Employee Recognition Program and, SBA's program requires awards "up to and including \$3,500" to be approved by the Associate Deputy Administrator for Management and Administration.

Title 5 CFR, Part 451, requires agencies to develop an award program(s) for cash awards and to file award documents in the recipient's official personnel folder. If the above awards had been considered part of the SBA awards program, they would have had to comply with SBA's SOP 34 50, *Employee Recognition Program*, and the following officials would have had to approve them:

AWARD AMOUNT	REQUIRED APPROVING OFFICIAL
\$10,000	Administrator.
\$2,500	Associate Deputy Administrator for Management and Administration.
\$2,200	Associate Deputy Administrator for Management and Administration.
\$1,200	Management Board member.
\$1,000	Management Board member.

**Inappropriate Use of Purchase Card** - NWBC used its credit card to purchase \$1,634.16 in inappropriate gifts and other expenditures that did not go towards fulfilling NWBC's mission. The purchase card, which was issued to an NWBC staff member, was used to purchase (1) gifts of two Palm hand-held organizers and accessories (\$955.57) and a Mont Blanc pen (\$161.94); (2) monthly water service for NWBC's office (\$416.90); and (3) home Internet service for a NWBC staff member (\$99.75). The Executive Director was the approving official for this purchase card. The NWBC staff member stated that the Executive Director approved all credit card purchases. The Executive Director stated she would have and could have approved the Mont Blanc pen, and believed it was appropriate for her office to have the water service. She stated that she had no recollection of the Palm purchases, and could not recall the details concerning the home Internet service. Both the office water service and home Internet service were subsequently cancelled by the acting Executive Director.

According to 68 Comp. Gen. 226 (1989), appropriated funds may not be used for personal gifts. Also, the GAO Redbook, Volume I, Chapter 1B states that Congress appropriates funds and prescribes the conditions governing the use of the funds. The funds appropriated to SBA and earmarked for NWBC are to be used to carry out NWBC's mission. These purchases were not necessary to carry out NWBC's mission.

Since the Executive Director was responsible for approving and reviewing the purchases, we believe she is responsible for all the unallowable purchases, not just those she acknowledged being aware of. When the NWBC Government purchase card was used, the Executive Director did not use or sign the SBA Form 2, *Requisition for Supplies, Services and Federal Assistance*, to approve credit card expenditures, though required by SOP 12 1, *Government Credit Cards*.

She did, however, sign Form 2s for other procurements, showing that she was aware of its use for purchases, and was attempting to follow SBA procurement procedures in some instances. The Executive Director acknowledged that she did not review the credit card statements and reconcile the account, though the Treasury Financial Manual, Volume 1, Part 4, Chapter 4500 requires her, as the approving official, to review the statement at the end of each monthly billing cycle.

**Inappropriate Use of Government Cellular Phone** – NWBC’s [exemption 6] made numerous personal calls on a Government issued cellular phone, and acknowledged that her husband also made personal calls on that phone. Such activity violates 5 CFR, § 2635.704, which states that an employee shall not use Government property, or allow its use, for other than authorized purposes. NWBC did not ensure that the cellular phone was being used for official purposes, despite the fact that OCIO officials stated that they verbally notified NWBC about the overcharges.

Based on the December 2000 billing statement for the phone, 53 percent of the 304 calls made that month were either made weekdays after business hours, i.e., between 6:00 p.m. and 6:00 a.m. (70 calls), or on weekends and holidays (90 calls). When questioned, the [exemption 6] did not object to auditors assuming these were personal calls. For the period July 2000 through May 2001, SBA paid \$718.85 in excess airtime charges for this cellular phone. At least some of the excess airtime charges were due to personal calls.

After auditors notified the acting Executive Director of the cellular phone abuse, she recovered \$1,073.25 in unauthorized charges from the [exemption 6] for all usage after May, 2001. The acting Executive Director also discontinued the phone service.

**Employee Drafted Lobbying Letters** - An NWBC staff member drafted and distributed lobbying letters for NWBC members with instructions to sign and forward the letters to pre-selected members of Congress. In the letter, NWBC lobbied Congress to increase the funding for NWBC. Title 18 USC §1913 prohibits the use of appropriated funds for lobbying. Since NWBC staff are Government employees, they are prohibited from using Government time, computers, and supplies to engage in such lobbying activities.

**Individual Served on NWBC without Appointment** - NWBC identified an individual as a NWBC member, even though this individual was not appointed to serve as a NWBC member, and it allowed her to attend NWBC meetings and other functions at Government expense. This individual was identified as a NWBC member for approximately two years until the acting Executive Director clarified the NWBC’s makeup in September 2001. According to Title 15 USC §7107, only the SBA Administrator can appoint NWBC members. The individual in question was not appointed by the SBA Administrator to be a NWBC member. This individual’s organization received several sole source contracts from NWBC despite failing to produce the required deliverables. Also, this individual incorporated SBE with the Executive Director to take over the Springboard forums from NWBC. NWBC members and staff were unfamiliar with the legal requirements for members to serve.



**Required Reports not Submitted or Submitted Late** - NWBC failed to submit its annual report to the President and Congress for FY 1999, and it submitted the FY 2000 report after the statutorily mandated deadline. The purpose of the annual report is to inform the President and Congress about the activities of NWBC and how it is using its appropriated funds. It is also the means by which NWBC provides its recommendations. The reports are required within 90 days after the end of each fiscal year.

The acting Executive Director prepared and submitted the FY 2000 report when she learned that the Executive Director had failed to do so. Although the FY 2000 report was due by December 29, 2000, and the Executive Director resigned on May 25, 2001, the Executive Director neglected to finalize and submit the report.

Since NWBC did not file the FY 1999 report and filed the FY 2000 report late, the President and Congress received untimely or no information about NWBC's activities. NWBC's recommendations were untimely or lacking despite the organization receiving a total of \$1.2 million in appropriated funds over these two years. Although there is no clear reason why the reports were not submitted, the Executive Director and Program Manager appeared to have expended their efforts working on Springboard forums and neglecting other NWBC work, such as producing these reports.

**Recommendations:**

We recommend that the Chief Financial Officer:

- 5A. Recover \$10,000 from the Program Manager for the improper cash award issued as a "consulting fee."
- 5B. Recover \$1,398.95 from the Executive Director for unallowable charges made on the Government-issued purchase card.
- 5C. Recover from [exemption 6] all non-recovered excess airline charges billed to her Government cellular phone that are due to personal calls.

We recommend that the current Executive Director:

- 5D. Determine whether SBA should seek recovery for the awards made to the Executive Director and NWBC staff that were improperly approved or not approved. If a determination is made that SBA should seek recovery, ensure that the Chief Financial Officer recovers the funds from the responsible party or parties.
- 5E. Review Title 18 USC §1913 with NWBC members and staff to ensure that everyone understands the lobbying restrictions imposed on Government employees.
- 5F. Review Title 15 USC §7107 with NWBC members and staff to ensure that everyone understands the requirements of NWBC's makeup and how members are to be appointed.

5G. Implement controls to ensure that statutorily required reports are prepared and submitted to appropriate officials in a timely manner.

***NWBC and SBA Management's Response:***

NWBC and SBA Management generally agreed with the recommendations contained in this finding. NWBC's current Executive Director claimed that *Recommendations 5E* and *5F* have already been addressed and could be removed from the final report. SBA Management pointed out that all recovery-related recommendations should be addressed to OGC rather than the CFO and that recoveries are not justified until OGC reviews the information. (See Management's response and OIG evaluation under *Finding 2*). The NWBC Executive Director noted that NWBC also failed to submit its annual report to the President and Congress for FYs 1995, 1996 and 1997.

***OIG Evaluation of NWBC and SBA Management's Response:***

The recommendations that the current NWBC Executive Director claimed have already been implemented will remain in the audit report, and it will be considered implemented when Management provides supporting documentation.

***Executive Director and Program Manager's Response:***

The Executive Director and Program Manager stated it is unfair to hold the Executive Director responsible for purchase card charges that cannot be attributed directly to her. The Executive Director relied on NWBC's [exemption 6] to ensure that applicable regulations were followed. They questioned that the charges constituted unallowable "gifts" and "other expenditures that did not go towards fulfilling NWBC's mission," requesting evidence that the Executive Director deliberately used the purchase card for improper purchases. They claimed that the \$10,000 provided to the Program Manager was money given in a good faith gesture by private parties to reward her for her work and that it was not a Government performance award. They reiterated that the funds were not Government funds. Lastly, they claimed that the Executive Director's cash awards should not be questioned since NWBC and SBA believed that NWBC was not part of SBA.

***OIG Evaluation of Executive Director and Program Manager's Response:***

We do not have to prove that purchase card charges are directly attributable to the Executive Director or that she deliberately used the purchase card for improper purchases in order to hold her accountable for inappropriate credit card usage. According to SOP 12 1, *Government Credit Cards* and Treasury Financial Manual, Volume 1, Part 4, Chapter 4500, the Executive Director, as approving official, was responsible for (1) approving all transactions before purchases were made; (2) reviewing the credit card statements to ensure that there were no charges that she did not approve; and (3) ensuring that the purchases were for allowable purposes. As such, the Executive Director was responsible for inappropriate purchases on the card.

The awards given to the Program Manager and the Executive Director had to follow Government regulations since both were Government employees and the awards were Government funds. We maintain that the Mid-Atlantic forum was organized and managed by NWBC, and as such, the funds from this forum belonged to the Government. As such, the \$10,000 in Government funds the Program Manager received from this forum's proceeds to thank her for a job well done is an award. As discussed in the finding, NWBC did not have its own awards program, so could not give out awards. If NWBC provided these awards using SBA's awards program, it would have had to comply with SBA's SOP 34 50, *Employee Recognition Program*, which it did not.

**Inappropriate NWBC Agreements**

<b>Organization receiving award, FY of award</b>	<b>Amount</b>	<b>Description of Project</b>	<b>De-facto grant inappropriately - awarded</b>	<b>De-facto co-sponsorship inappropriately awarded</b>	<b>Agreement entered into by non-contracting officer</b>	<b>Sole Source Justification Invalid</b>	<b>Contract not set aside for Small Business</b>	<b>Contractor Paid without delivering the required product</b>
Center for Policy Alternatives FY99	\$10,000	Support for CPA's Entrepreneurial Action Day	X		X	X	X	
Center for Women & Enterprise FY99	\$25,000	Market Research on Equity Funding-Year 1			X	X	X	X
Center for Women & Enterprise FY00	\$25,000	Market Research on Equity Funding-Year 2			X	X	X	X
Center for Women & Enterprise FY01	\$10,000	Market Research on Equity Funding-Year 3			X	X	X	
Forum for Women Entrepreneurs FY99	\$25,000	Springboard Co-sponsorship		X	X	X	X	
Forum for Women Entrepreneurs FY99	\$10,000	Springboard co-sponsorship		X			X	
Forum for Women Entrepreneurs FY00	\$20,000	Springboard Web Site		X	X	X	X	
National Foundation for Women Business Owners FY99	\$25,000	Procurement Research Phase I			X	X	X	
National Foundation for Women Business Owners FY99	\$25,000 modification*	Procurement Research Phase II					X	

<b>Organization receiving award, FY of award</b>	<b>Amount</b>	<b>Description of Project</b>	<b>De-facto grant inappropriately - awarded</b>	<b>De-facto co-sponsorship inappropriately awarded</b>	<b>Agreement entered into by non- contracting officer</b>	<b>Sole Source Justification Invalid</b>	<b>Contract not set aside for Small Business</b>	<b>Contractor Paid without delivering the required product</b>
National Foundation for Women Business Owners FY00	\$25,000	Analysis of Procurement by Women Firms			X	X	X	
National Foundation for Women Business Owners FY00	\$25,000 modification*	Additional Analysis of Procurement by Women Firms					X	
National Foundation for Women Business Owners FY01	\$45,000	Census Report of Women Businesses			X	X	X	
National Foundation for Women Business Owners FY01	\$50,000	Technical Assistance to Businesses Study	X		X	X	X	
Organization for Economic Cooperation and Development (OECD) FY00	\$25,000	Sponsorship for Conference on Women Entrepreneurs	X			X		
Women Incorporated (WI) FY01	\$25,000	Sponsor a Hearing on Women Business Issues – State Economic Network	X		X	X	X	
Women’s Economic Summit (Summit ’98)	\$10,500	State Economic Network Handbook			X	X	X	

\* - Modifications are continuation of existing contracts with new or revised terms.

# Travel Expenses To Be Recovered

## Appendix B

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Authorization Number	Traveler	Amount Questioned	Reason Questioned				
			Post-dated or Unauthorized Conference Travel	Unnecessary Travel to Las Vegas	Travel to Private Entity's Board Meeting (SBE)	Duty Station Lodging Expense	Lodging in Excess of Per Diem
9.8300.0034	Millman	\$391.04	X				
9.8300.0035	Millman	\$672.24	X				
9.8300.0038	Millman	\$410.00	X				
9.8300.0045	Millman	\$527.50	X				
9.8300.0057	Millman	\$586.21	X				
9.8300.0079	Millman	\$1,922.98	X			X	X
9.8300.0088	Millman	\$760.05	X				X
9.8300.0094	Millman	\$1,395.13	X				X
9.8300.0100	Millman	\$1,022.20	X				
9.8300.0101	Suddarth	\$918.89	X				
9.8300.0105	Millman	\$755.80	X				
9.8300.0107	Garcia	\$1,926.56	X				X
9.8300.0110	Jackson	\$554.40	X				
9.8300.0111	Millman	\$369.00	X				
9.8300.0115	Millman	\$598.04	X				
9.8300.0122	Millman	\$431.52	X				
9.8300.0135	Millman	\$1,176.65	X				X
9.8300.0136	Filtzer	\$717.00	X				
9.8300.0143	Millman	\$480.50	X				
9.8300.0147	Millman	\$491.03	X				X
9.8300.0148	Filtzer	\$612.06	X				X
9.8300.0149	Millman	\$2,931.20	X			X	X
9.8300.0157	Slater	\$544.20	X				
9.8300.0158	Silberg	\$1,273.40	X				
9.8300.0165	Millman	\$706.03	X				X
9.8300.0173	Dean	\$499.20	X				X
9.8300.0179	Millman	\$760.20	X				X
9.8300.0189	Filtzer	\$956.22	X				X
0.8300.0002	Millman	\$153.50	X				
0.8300.0011	Millman	\$516.31	X				
0.8300.0012	Millman	\$3,041.08	X				X
0.8300.0026	Millman	\$1,004.61	X				X
0.8300.0028	Millman	\$766.41	X				
0.8300.0030	Millman	\$168.50	X				
0.8300.0037	Filtzer	\$1,392.21	X				
0.8300.0042	Millman	\$1,373.76	X				X

# Travel Expenses To Be Recovered

# Appendix B

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Authorization Number	Traveler	Amount Questioned	Reason Questioned				
			Post-dated or Unauthorized Conference Travel	Unnecessary Travel to Las Vegas	Travel to Private Entity's Board Meeting (SBE)	Duty Station Lodging Expense	Lodging in Excess of Per Diem
0.8300.0043	Filtzer	\$1,530.43	X				
0.8300.0056	Millman	\$713.06	X				X
0.8300.0065	Millman	\$217.50	X				
0.8300.0071	Millman	\$247.00	X				
0.8300.0102	Millman	\$560.00	X				
0.8300.0103	Filtzer	\$885.84	X				
0.8300.0108	Millman	\$690.92	X				X
0.8300.0110	Filtzer	\$166.00	X				
0.8300.0115	Millman	\$904.62	X				X
0.8300.0121	King	\$711.45	X				X
0.8300.0123	Millman	\$680.32	X				X
0.8300.0124	Filtzer	\$218.74	X				
0.8300.0128	Filtzer	\$343.69	X				X
0.8300.0132	Filtzer	\$161.00	X				
0.8300.0138	Millman	\$569.54	X				
0.8300.0140	Millman	\$214.00	X				
0.8300.0141	Millman	\$539.24	X				
0.8300.0142	Filtzer	\$333.00	X				
0.8300.0150	Millman	\$332.00	X				
0.8300.0155	Millman	\$1,091.32	X				X
0.8300.0156	Millman	\$635.08	X				X
0.8300.0158	Filtzer	\$211.00	X				
0.8300.0163	King	\$214.50	X				
1.8300.0018	Filtzer	\$278.01	X			X	X
1.8300.0019	King	\$250.76	X			X	X
1.8300.0020	Presley	\$270.22	X			X	X
1.8300.0021	Millman	\$375.00	X				
1.8300.0022	Filtzer	\$244.50	X				
1.8300.0023	King	\$1,294.38	X				X
1.8300.0024	Millman	\$1,268.18	X	X			
1.8300.0025	Filtzer	\$1,208.68	X	X			
1.8300.0026	Presley	\$523.18		X			
1.8300.0029	Millman	\$804.80	X				
1.8300.0030	Filtzer	\$600.90	X				
1.8300.0031	Millman	\$356.00	X				
1.8300.0034	Millman	\$3,474.27	X				X

# Travel Expenses To Be Recovered

## Appendix B

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Authorization Number	Traveler	Amount Questioned	Reason Questioned				
			Post-dated or Unauthorized Conference Travel	Unnecessary Travel to Las Vegas	Travel to Private Entity's Board Meeting (SBE)	Duty Station Lodging Expense	Lodging in Excess of Per Diem
1.8300.0038	Filtzer	\$586.75	X				X
1.8300.0045	Millman	\$110.00					X
1.8300.0049	Millman	\$207.00	X				
1.8300.0050	Filtzer	\$207.00	X				
1.8300.0052	Filtzer	\$233.50	X				
1.8300.0053	Millman	\$242.50	X				X
1.8300.0054	Filtzer	\$476.87	X				
1.8300.0055	Millman	\$517.36	X		X		
1.8300.0058	Millman	\$385.50	X				
1.8300.0071	Millman	\$211.50	X				
1.8300.0074	Millman	\$145.50	X				
1.8300.0075	Millman	\$971.00	X				
1.8300.0079	Millman	\$1,173.64	X				
1.8300.0081	Filtzer	\$686.50	X				
1.8300.0084	Millman	\$275.75	X				
1.8300.0122	Filtzer	\$91.50	X				
1.8300.0125	Millman	\$550.00	X				
1.8300.0126	Filtzer	\$115.50	X				
1.8300.0127	Millman	\$548.94	X				
1.8300.0128	Filtzer	\$157.75	X				
1.8300.0132	Millman	\$1,483.40	X				X
1.8300.0133	Filtzer	\$115.50	X				
1.8300.0134	Presley	\$886.18	X				
1.8300.0138	Millman	\$394.50	X				
1.8300.0139	Millman	\$91.50	X				
1.8300.0140	Presley	\$1,197.87	X				
1.8300.0153	Millman	\$294.00	X				
1.8300.0157	Millman	\$756.68	X				X
1.8300.0164	Presley	\$124.88	X				
1.8300.0165	Presley	\$225.79	X				
<b>TOTAL</b>		<b>\$69,389.12</b>					



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Inappropriate NWBC Agreements

Organization receiving award, FY of award	Amount	Description of Project	De-facto grant inappropriately - awarded	De-facto co-sponsorship inappropriately awarded	Agreement entered into by non- contracting officer	Sole Source Justification Invalid	Contract not set aside for Small Business	Contractor Paid without delivering the required product
FY99 b4 ]	\$10,000	[ b4 ]	X		X	X	X	
FY99 b4 ]	\$25,000	[ b4 ]			X	X	X	X
FY00 b4 ]	\$25,000	[ b4 ]			X	X	X	X
FY01 b4 ]	\$10,000	[ b4 ]			X	X	X	
b4 FY99	\$25,000	Springboard Co-sponsorship		X	X	X	X	
b4 FY99	\$10,000	Springboard co-sponsorship		X			X	
b4 FY00	\$20,000	Springboard Web Site		X	X	X	X	
FY99 b4 ]	\$25,000	[ b4 ]			X	X	X	
FY99 b4 ]	\$25,000 modification*	[ b4 ]					X	

officer	Sole Source Justification Invalid	Contract not set aside for Small Business	Contractor Paid without delivering the required product
	X	X	
	X	X	X
	X	X	
	X	X	
	X	X	
		X	
	X	X	

Organization receiving award, FY of award	Amount	Description of Project	De-facto grant inappropriately - awarded	De-facto co-sponsorship inappropriately awarded	Agreement entered into by non- contracting officer	Sole Source Justification Invalid	Contract not set aside for Small Business	Contractor Paid without delivering the required product
FY00 b4 ]	\$25,000	b4 ]			X	X	X	
FY00 b4 ]	\$25,000 modification*	b4 ]					X	
FY01 b4 ]	\$45,000	b4 ]			X	X	X	
FY01 b4 ]	\$50,000	b4 ]	X		X	X	X	
FY00 b4 ]	\$25,000	b4 ]	X			X		
FY01 b4 ]	\$25,000	b4 ]	X		X	X	X	
FY01 b4 ]	\$10,500	b4 ]			X	X	X	

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# Travel Expenses To Be Recovered

## Appendix B

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Authorization Number	Traveler	Amount Questioned	Reason Questioned				
			Post-dated or Unauthorized Conference Travel	Unnecessary Travel to Las Vegas	Travel to Private Entity's Board Meeting (SBE)	Duty Station Lodging Expense	Lodging in Excess of Per Diem
9.8300.0034	Millman	\$391.04	X				
9.8300.0035	Millman	\$672.24	X				
9.8300.0038	Millman	\$410.00	X				
9.8300.0045	Millman	\$527.50	X				
9.8300.0057	Millman	\$586.21	X				
9.8300.0079	Millman	\$1,922.98	X			X	X
9.8300.0088	Millman	\$760.05	X				X
9.8300.0094	Millman	\$1,395.13	X				X
9.8300.0100	Millman	\$1,022.20	X				
9.8300.0101	[b6]	\$918.89	X				
9.8300.0105	Millman	\$755.80	X				
9.8300.0107	[b6]	\$1,926.56	X				X
9.8300.0110		\$554.40	X				
9.8300.0111	Millman	\$369.00	X				
9.8300.0115	Millman	\$598.04	X				
9.8300.0122	Millman	\$431.52	X				
9.8300.0135	Millman	\$1,176.65	X				X
9.8300.0136	Filtzer	\$717.00	X				
9.8300.0143	Millman	\$480.50	X				
9.8300.0147	Millman	\$491.03	X				X
9.8300.0148	Filtzer	\$612.06	X				X
9.8300.0149	Millman	\$2,931.20	X			X	X
9.8300.0157	[b6]	\$544.20	X				
9.8300.0158		\$1,273.40	X				
9.8300.0165	Millman	\$706.03	X				X
9.8300.0173	[b6]	\$499.20	X				X
9.8300.0179	Millman	\$760.20	X				X
9.8300.0189	Filtzer	\$956.22	X				X
0.8300.0002	Millman	\$153.50	X				
0.8300.0011	Millman	\$516.31	X				
0.8300.0012	Millman	\$3,041.08	X				X
0.8300.0026	Millman	\$1,004.61	X				X
0.8300.0028	Millman	\$766.41	X				
0.8300.0030	Millman	\$168.50	X				
0.8300.0037	Filtzer	\$1,392.21	X				
0.8300.0042	Millman	\$1,373.76	X				X

Authorization Number	Traveler	Amount Questioned	Reason Questioned				
			Post-dated or Unauthorized Conference Travel	Unnecessary Travel to Las Vegas	Travel to Private Entity's Board Meeting (SBE)	Duty Station Lodging Expense	Lodging in Excess of Per Diem
0.8300.0043	Filtzer	\$1,530.43	X				
0.8300.0056	Millman	\$713.06	X				X
0.8300.0065	Millman	\$217.50	X				
0.8300.0071	Millman	\$247.00	X				
0.8300.0102	Millman	\$560.00	X				
0.8300.0103	Filtzer	\$885.84	X				
0.8300.0108	Millman	\$690.92	X				X
0.8300.0110	Filtzer	\$166.00	X				
0.8300.0115	Millman	\$904.62	X				X
0.8300.0121	[b6]	\$711.45	X				X
0.8300.0123	Millman	\$680.32	X				X
0.8300.0124	Filtzer	\$218.74	X				
0.8300.0128	Filtzer	\$343.69	X				X
0.8300.0132	Filtzer	\$161.00	X				
0.8300.0138	Millman	\$569.54	X				
0.8300.0140	Millman	\$214.00	X				
0.8300.0141	Millman	\$539.24	X				
0.8300.0142	Filtzer	\$333.00	X				
0.8300.0150	Millman	\$332.00	X				
0.8300.0155	Millman	\$1,091.32	X				X
0.8300.0156	Millman	\$635.08	X				X
0.8300.0158	Filtzer	\$211.00	X				
0.8300.0163	[b6]	\$214.50	X				
1.8300.0018	Filtzer	\$278.01	X			X	X
1.8300.0019	[b6]	\$250.76	X			X	X
1.8300.0020	[b6]	\$270.22	X			X	X
1.8300.0021	Millman	\$375.00	X				
1.8300.0022	Filtzer	\$244.50	X				
1.8300.0023	[b6]	\$1,294.38	X				X
1.8300.0024	Millman	\$1,268.18	X	X			
1.8300.0025	Filtzer	\$1,208.68	X	X			
1.8300.0026	[b6]	\$523.18		X			
1.8300.0029	Millman	\$804.80	X				
1.8300.0030	Filtzer	\$600.90	X				
1.8300.0031	Millman	\$356.00	X				
1.8300.0034	Millman	\$3,474.27	X				X

Authorization Number	Traveler	Amount Questioned	Reason Questioned				
			Post-dated or Unauthorized Conference Travel	Unnecessary Travel to Las Vegas	Travel to Private Entity's Board Meeting (SBE)	Duty Station Lodging Expense	Lodging in Excess of Per Diem
1.8300.0038	Filtzer	\$586.75	X				X
1.8300.0045	Millman	\$110.00					X
1.8300.0049	Millman	\$207.00	X				
1.8300.0050	Filtzer	\$207.00	X				
1.8300.0052	Filtzer	\$233.50	X				
1.8300.0053	Millman	\$242.50	X				X
1.8300.0054	Filtzer	\$476.87	X				
1.8300.0055	Millman	\$517.36	X		X		
1.8300.0058	Millman	\$385.50	X				
1.8300.0071	Millman	\$211.50	X				
1.8300.0074	Millman	\$145.50	X				
1.8300.0075	Millman	\$971.00	X				
1.8300.0079	Millman	\$1,173.64	X				
1.8300.0081	Filtzer	\$686.50	X				
1.8300.0084	Millman	\$275.75	X				
1.8300.0122	Filtzer	\$91.50	X				
1.8300.0125	Millman	\$550.00	X				
1.8300.0126	Filtzer	\$115.50	X				
1.8300.0127	Millman	\$548.94	X				
1.8300.0128	Filtzer	\$157.75	X				
1.8300.0132	Millman	\$1,483.40	X				X
1.8300.0133	Filtzer	\$115.50	X				
1.8300.0134	[b6]	\$886.18	X				
1.8300.0138	Millman	\$394.50	X				
1.8300.0139	Millman	\$91.50	X				
1.8300.0140	[b6]	\$1,197.87	X				
1.8300.0153	Millman	\$294.00	X				
1.8300.0157	Millman	\$756.68	X				X
1.8300.0164	[b6]	\$124.88	X				
1.8300.0165	[b6]	\$225.79	X				
TOTAL		\$69,389.12					



May 20, 2003

Mr. Harold Damelin  
Inspector General  
U. S. Small Business Administration  
409 3<sup>rd</sup> Street, SW  
Washington, DC 20416

Dear Mr. Damelin:

This letter is in response to the Office of Inspector General's draft audit report of the National Women's Business Council, Report 3-X. I appreciate being given the opportunity to respond to this report and the recommendations contained therein.

To begin, let me say how disturbed I am at the extent of the ethical and procedural violations documented in this report – not only the number of documented violations, but the fact that they occurred over such an extended period of time. I strongly support the Inspector General and the Small Business Administration's efforts to uncover and document these abuses, seek recovery of misspent funds, and set in place procedures to ensure that this cannot happen again.

I take no issue whatsoever with the need for administrative oversight of the expenditures of the National Women's Business Council (hereafter "Council"), to ensure they are carried out in accordance with Federal rules and regulations. However, given the fact that the Council has a Congressionally-mandated mission to provide independent advice and counsel – not only to the President and Congress but to the Small Business Administration itself – on policy issues of importance to the women's business community, that oversight should be administrative in nature and should not interfere with the independent, advisory status of the Council.

In general, if all of the rules and responsibilities that apply to SBA program offices also apply to the Council insofar as expenditure of funds (such as travel, research contracts and performance awards), we would like to explore how the Council might then be accorded the rights to expenditure vehicles that are likewise available to the SBA, such as co-sponsorship and grant authority.

I have discussed the audit report and its recommendations with the Office of General Counsel and others in the SBA, and will not comment specifically about the recommendations being directed toward SBA offices. Here, though, are my responses to the recommendations being made to me as the current Executive Director of the National Women's Business Council.

#### Responses to Specific Recommendations

##### I. Ethics Violations

- Recommendation 1C: That item has already been taken care of – all current employees received ethics training shortly after becoming employed at the Council. Therefore, this recommendation could be removed from the final report.



NWBC response to IG Audit Report, page two

II. Inappropriate Agreements

- Recommendation 2A: While we agree that this question should be posed to Springboard Enterprises, given that the former Council Executive Director is now its Executive Director, we feel that:
  - i. The Council does not have the expertise to request or review the information. Further, if this information was deemed to be important during the audit, it should have been requested by the auditors at that time, and
  - ii. We feel that, on principle, independent third parties should not be held accountable for the misdeeds of the former Executive Director. We would therefore disagree that any Springboard forum co-hosts should, at this stage, be requested or required to provide any additional information or justifications.
- Recommendation 2B: We concur with this recommendation, and it will be arranged with the appropriate bodies within the SBA.

III. Travel Policy Violations

- Recommendations 3A & 3B: This has already been addressed. We have had a briefing on travel regulations, and all requirements with respect to travel vouchers and documentation are already being met. Therefore, this recommendation could be removed from the final report.

V. Other Violations

- Recommendation 5D: While we support the tenor of this recommendation, we seek guidance from relevant SBA officials on how the determination of whether or not to seek the recovery of cash awards can be made.
- Recommendations 5E, 5F: These issues have already been addressed. Training in these areas has occurred, and this recommendation could be removed from the final report.
- Recommendation 5G: This issue will be addressed. The FY2002 Annual Report was submitted to Congress earlier than in any previous year, and subsequent reports will be submitted on time.

Finally, as a point of clarification: it was mentioned on pages iii, 18 and 21 of the audit report that the Council did not submit an annual report in FY1999. Upon my review after assuming the position of Executive Director, during my preparation of the FY2002 annual report, I discovered that annual reports were also not submitted in FY1995, FY1996 or FY1997.

Thank you again for the opportunity to respond to this report.

Sincerely,

b6

Julie R. Weeks  
Executive Director





U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, DC 20416

DATE: May 23, 2003

TO: Harold Damelin  
Inspector General

FROM: Lisa M. Goear-  
Chief of Staff

David A. Javdar  
General Counsel

Thomas A. Dumaresq  
Chief Financial Officer

Robert L. Gangwere  
Designated Agency Ethics Official

IN RE: Response to Office of Inspector General's Draft Audit Report – The  
National Women's Business Council

We are responding to the Office of Inspector General's (OIG's) draft Audit of the National Women's Business Council (NWBC), Report No. 3-X ("Draft Report"), dated April 1, 2003. We appreciate the opportunity to respond and to offer some revisions to your proposed recommendations.

The NWBC was established by Congress by section 401 of the Women's Business Ownership Act of 1988 for the purpose of reviewing the status of women-owned businesses and the roles played by federal, state and local governmental entities in assisting women entrepreneurs.<sup>1</sup> The NWBC is an independent federal advisory committee with operational authority, subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 1. It uses SBA's gift acceptance authority and SBA's procurement and FFS systems, and the NWBC's Executive Director and staff are SBA public law employees. The enabling legislation, at 15 U.S.C. 631, as amended, designates how the President and the Administrator are to select the NWBC chair, members and the Executive Director, respectively.

As indicated in the Draft Report, the audit was a direct result of a referral made by the Office of General Counsel (OGC) to OIG in April of 2001. Subsequently, OGC has issued

<sup>1</sup> Women's Business Ownership Act of 1988, P.L. 100-533 (October 25, 1988), codified at 15 U.S.C. 631.

five legal opinions concerning the NWBC's authority and its relationship to SBA. The issues addressed include: 1) the employment status of the NWBC's Executive Director and her staff; 2) whether appropriated and gift funds can be used to provide refreshments at meetings hosted by the NWBC; 3) whether NWBC members can delegate their authority to others; 4) whether NWBC members are "special government employees;" and 5) the applicability of Federal procurement laws and regulations to NWBC research and study contracts. In support of this audit, OGC also provided legal advice to OIG concerning the six Springboard Forums which were held between January 2000 and May 2001.

In addition, SBA management has taken numerous steps designed to ensure effective SBA oversight of the NWBC's administrative, personnel and financial operations. These actions include the appointment of an acting Executive Director in early June of 2001 who, in conjunction with the Agency, took decisive action to improve the operation of the office, including the following specific steps: 1) obtaining the recovery of sums from former NWBC staff relating to travel expenses; 2) obtaining the recovery of sums from current NWBC staff for misuse of government property; 3) rejecting the payment of certain travel claims from former NWBC staff; 4) establishing proper time and attendance, as well as government contracting, procedures; 5) obtaining training for NWBC staff; 6) securing and protecting NWBC property; and 7) clarifying the employment status of NWBC staff. SBA is confident that these actions have made a substantial contribution toward assisting the NWBC in complying with all Federal laws and regulations applicable to its operations, and the Agency looks forward to working with the current Executive Director as she continues to improve the NWBC's internal operations.

Current SBA management was shocked and dismayed by the extent and scope of the ethical, legal and procedural violations it discovered with regard to NWBC operations during the past Administration. We emphasize, however, that since that time major improvements and corrective actions (as noted above) have taken place. With the issuance of this audit and the implementation of the agreed upon recommendations, SBA and the current NWBC can help ensure that the NWBC continues to meet its important statutory mission.

### RECOMMENDATIONS

OIG has made twenty-six specific recommendations to SBA and the NWBC. It is our understanding that the NWBC will respond to this Draft Report independently and, therefore, where applicable, SBA defers to the NWBC with regard to recommendations addressed directly to it.

SBA addresses each of OIG's recommendations as follows:

*That the Administrator:*

- 1A *Appoint a senior SBA official to monitor NWBC compliance with all laws and regulations pertaining to administrative matters.*

The Administrator has already appointed a senior SBA management official to provide administrative oversight for the Executive Director of the NWBC. During the last two years, the Chief of Staff and then the Associate Deputy Administrator for Entrepreneurial Development have been responsible for providing administrative oversight and clearing the Executive Director's official leave and travel. Recently, the Administrator appointed Robert J. Moffitt, acting Deputy Associate Deputy Administrator for Management and Administration, to continue with that responsibility and to ensure that all contracting activities, as well as the expenditure of appropriated and gift funds, are conducted according to SBA internal administrative procedures.

Thus, SBA requests that Recommendation 1A be deleted from the final audit report.

- 1B Issue a notice throughout the SBA stating that all NWBC staff members are SBA employees, and as such are subject to the same SBA rules and policies as other SBA offices.*

SBA agrees in part and disagrees in part with this recommendation. While it would make sense to issue an Information Notice to all SBA Management Board members informing them that NWBC staff members are SBA employees, and as such are subject to the same SBA and government-wide rules and regulations that apply to other SBA employees, it is unnecessary to issue such a notice to every SBA employee. Most SBA employees do not conduct business with NWBC or have any contact with the NWBC office, and therefore have no need to receive such notice. By sending a notice to all Management Board members, the people who need to be aware of the NWBC's status will have received proper notice. Management Board members may, of course, communicate such information to their subordinates on an as needed basis.

It is incumbent on SBA to manage its electronic notification system in a way that tailors its communications to the individual employees that have a need to know and limit the number of "all employees" notices, thus maximizing the likelihood that important notices from management will be read. Therefore, SBA requests that Recommendation 1B be revised to read as follows:

- 1B Issue an Information Notice to all Management Board members informing them that NWBC staff are SBA employees, and as such are subject to the same SBA and Government-wide rules and regulations as other SBA employees.*
- 1C Determine, in consultation with the Designated Agency Ethics Officer [sic], whether the duties and the responsibilities of the Executive Director and/or Program Manager are such that they should be required to file confidential financial disclosure reports.*

SBA management, in consultation with the Designated Agency Ethics Official (DAEO), has already done so. SBA management determined that the NWBC Executive Director will be required to file an annual Confidential Financial Disclosure Report (Form 450). Currently, the NWBC does not have a "Program Officer."

Thus, SBA requests that Recommendation 1C be deleted from the final audit report.

*That the Executive Director of NWBC:*

*1D Ensure that all current and future NWBC employees receive Ethics training.*

SBA defers to the NWBC on this recommendation; however we understand that the Executive Director has agreed to this recommendation. In fact, the Executive Director and her current staff received ethics training as part of their new SBA employee orientation. The Executive Director and her staff will also be included in all future ethics training offered to SBA headquarters employees by the DAEO or his staff.

Thus, SBA requests that Recommendation 1D be deleted from the final audit report.

*That the Designated Agency Ethics Officer [sic]:*

*1E Finalize the supplemental regulation requiring agency employees to obtain prior approval before seeking outside employment.*

SBA disagrees with this recommendation. Government ethics rules already require all SBA employees to personally ensure that their outside activities conform to all Government-wide ethics laws and regulations. See 5 CFR Part 2635, Subpart H. Seeking counseling and advice from an Agency ethics official before engaging in outside activity is, therefore, the responsibility of SBA employees. This fact is stressed in all regular ethics training provided to new and current SBA employees, and is mentioned on SBA's Intranet "Ethics Home Page."

The Designated Agency Ethics Official (DAEO) also notes that the authority to determine when it is "necessary or desirable" for an agency to issue "supplemental regulations," requiring employees or any category of employees to obtain prior approval before engaging in specific types of outside activities, rests solely with the DAEO. Several years ago the DAEO considered issuing such supplemental regulations but decided not to do so for several reasons. First, SBA required outside activity approvals prior to the promulgation of new Office of Government Ethics (OGE) regulations in 1993. It was the experience of the DAEO that the benefits gained from processing, reviewing and responding to such requests did not

justify the substantial cost in staff time involved. Since 1993 the support staff available to SBA ethics officials has substantially decreased, making a return to the old system impossible. Second, since over 2,000 SBA employees, primarily grades 11 through 15, annually file Confidential Financial Disclosure Reports (Form 450) that disclose their outside activities, such an approval process is unnecessary.

Consequently, the DAEO does not intend to issue supplemental regulations at this time. The DAEO will agree, however, to issue an Information Notice to all SBA employees stressing the requirements of the law and the need to consult with an SBA ethics official prior to engaging in certain types of outside activities.

Therefore, SBA requests that Recommendation 1E be revised to read as follows:

- 1E Issue an Information Notice to all SBA employees reminding them of the relevant ethics laws and regulations pertaining to certain types of outside activities, and encourage them to consult with an SBA ethics official prior to engaging in such activities.

*That the Executive Director of NWBC:*

- 2A *Require SBE and other co-hosts of the Springboard forums to provide justification for the forum income retained by SBE and co-hosts from the Silicon Valley I and II, New England, New York and Mid-West forums based on estimated expenses incurred. After reviewing the justification, determine whether any income in excess of expenses should be recovered. If a determination to seek recovery is made, ensure that the Chief Financial Officer recovers the funds from the responsible party or parties.*

SBA defers to the NWBC with regard to the first part of this recommendation. However, we note that, even if the NWBC determines that recovery should be pursued, SBA reserves the right to independently determine whether recovery is legally supportable. We do agree, however, to consider any referral made by the NWBC with regard to this issue.

- 2B *Ensure that NWBC members and staff receive written guidance and training from OPGM on appropriations law dealing with the distinctions between contracts, grants and cosponsorship authority.*

SBA defers to the NWBC with regard to its willingness to seek such guidance and training. However, SBA disagrees that OPGM is the appropriate office to provide guidance and training "on appropriations law," if requested. Instead, the appropriate office would be the Office of General Counsel.

*That the Chief Financial Officer:*

- 2C *Recover \$50,000 from [redacted] for not producing the required deliverables in FYs 1999 and 2000.*

SBA does not agree that this recommendation is appropriately directed to the Chief Financial Officer (OGC is the appropriate office), or that a decision to seek recovery is justified at this time. Such a conclusion is premature. SBA does agree, however, to review this matter. To the extent that OGC determines that recovery is legally supportable, SBA will review its legal options and make a final determination as to how to proceed.

- 2D *Recover \$63,000 from SBE for the Mid-Atlantic forum proceeds it received.*

See SBA's response to Recommendation 2C, above.

*That the Executive Director of NWBC:*

- 3A *Take the necessary steps to ensure that all NWBC employees are knowledgeable about the relevant travel regulations.*

SBA defers to the NWBC on this recommendation. However, SBA agrees to provide the NWBC whatever assistance is requested, subject to available funding, with regard to assisting the NWBC's members and staff in understanding and complying with Federal travel regulations.

- 3B *Ensure that travel vouchers are completed and supporting documentation maintained to support all future invitational travel.*

SBA defers to the NWBC on this recommendation. However, SBA agrees to provide the NWBC whatever assistance is requested with regard to assisting the NWBC's members and staff in properly documenting their invitational travel.

*That the General Counsel:*

- 3C *Determine whether travelers are liable for the cost of their foreign travel if the authorization violates SBA's Travel SOP, but SBA and the travelers mistakenly believed that the travelers did not have to comply with SBA regulations.*

SBA agrees to have OGC review the primary documents assembled by OIG and determine what actions, if any, are required. To the extent that OGC determines that recovery is legally supportable, SBA will review its legal options and make a final determination as to how to proceed. We assume that the OIG's reference to "SBA regulations" is to the Federal Travel Regulations, as SBA does not have its own travel regulations.

*That the Chief Financial Officer:*

- 3D *Recover \$69,389.12 from appropriate parties for improperly authorized travel that has not yet been recovered.*

SBA disagrees that this recommendation is appropriately directed to the Chief Financial Officer (OGC is the appropriate office), or that a decision to seek recovery is justified at this time. Such a conclusion is premature. SBA does agree, however, to have the OGC review the primary documents assembled by OIG and determine what actions, if any, are required. To the extent that OGC determines that recovery is legally supportable, SBA will review its legal options and make a final determination as to how to proceed.

- 3E *Recover from the responsible individual(s) any funds due the Government based on the determination the General Counsel makes in implementing Recommendation 3C.*

See SBA's response to Recommendation 3C, above.

- 3F *Incorporate provisions in SBA's travel SOP requiring the NWBC Director to obtain prior written authorization for her travels from the person whom SBA will identify in response to Recommendation 1A.*

SBA agrees with this recommendation.

- 4A *Transfer the remaining balance of \$2,375.83 from NWBC's BATF account to the appropriate SBA travel account.*

SBA agrees with this recommendation. The Office of the CFO, using its records and the records that OIG has gathered during this audit, will record the transfer of the appropriate amount from the BATF to the Salaries and Expenses Appropriation for the fiscal year to which the original travel reimbursement applied.

- 4B *Recover \$4,921.43 (\$7,297.26 in deposited travel reimbursements less the \$2,375.83 remaining BATF balance) from the [former] Executive Director to correct the reimbursements for Government-paid travel expenses that were improperly deposited into the BATF, and recover an additional \$1,682.30 from the [former] Executive Director to cover the shortfall in the BATF resulting from the reception held in her honor.*

See SBA's response to Recommendation 3D, above.

- 4C *Finalize SOP 20 14, Funds Received from Non-Appropriated Sources, to provide clear guidance on the proper use of the BATF.*

SBA agrees with this recommendation. SOP 20 14 for the BATF has been in a draft form for a number of years. The Office of the CFO will work with OGC to update the SOP and place it in clearance within the Agency.

- 4D *Provide training and written guidance to OCFO employee(s) to ensure that BATF transactions are reviewed (both deposits and expenses) for propriety and that any suspicious transactions are reported to his/her supervisor for proper action.*

SBA agrees to this recommendation. Within the Office of the CFO, the Budget Officer, the Director of Financial Administration, and the Director of the Denver Finance Center will review the existing process used for BATF deposits and expenses to assure that transactions are reviewed for propriety and that suspicious transactions are referred for higher level review. Subsequent to this review, the resulting BATF procedures will be documented and communicated to OCFO staff members handling BATF transactions and included in the final version of SOP 20 14.

- 5A *Recover \$10,000 from the [former] Program Manager for the improper cash award issued as a "consulting fee."*

See SBA's response to Recommendation 3D, above.

- 5B *Recover \$1,398.95 from the [former] Executive Director for unallowable charges made on the Government-issued purchase card.*

See SBA's response to Recommendation 3D, above.

- 5C *Recover from the [b6] all non-recovered excess airtime charges billed to her Government cellular phone that are due to personal calls.*

See SBA's response to Recommendation 3D, above.

*That the Executive Director of NWBC:*

- 5D *Determine whether SBA should seek recovery for the awards made to the [former] Executive Director and NWBC staff that were improperly approved or not approved. If a determination is made that SBA should seek recovery, ensure that the Chief Financial Officer recovers the funds from the responsible party or parties.*

SBA defers to the NWBC with regard to the first part of this recommendation. However, we note that, even if the NWBC determines that recovery should be pursued, SBA reserves the right to independently determine whether recovery is legally supportable. We do agree, however, to consider any referral made by the NWBC with regard to this issue.

- 5E *Review Title 18 USC § 1913 with NWBC members and staff to ensure that everyone understands the lobbying restrictions imposed on Government employees.*



SBA defers to the NWBC on this recommendation. However, SBA is willing to provide the NWBC members and staff assistance with regard to understanding and complying with the anti-lobbying statute.

- 5F *Review 15 USC § 7107 with NWBC members and staff to ensure that everyone understands the requirements of NWBC's makeup and how members are to be appointed.*

SBA defers to the NWBC on this recommendation. However, SBA is willing to provide the NWBC members and staff assistance with regard to understanding the NWBC's statutory structure and authority. Several of OGC's recent legal opinions have already done so.

- 5G *Implement controls to ensure that statutorily required reports are prepared and submitted to appropriate officials in a timely manner.*

SBA defers to the NWBC on this recommendation.

If you have any questions or wish to discuss this matter further, please contact Robert Gangwere, Acting Deputy General Counsel, OGC, at (202) 619-0639.

cc: Julie R. Weeks, Executive Director, NWBC

# COVINGTON & BURLING

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May 23, 2003

## **BY FACSIMILE AND FEDERAL EXPRESS**

Robert G. Seabrooks  
 Assistant Inspector General for Auditing  
 U.S. Small Business Administration  
 Office of the Inspector General  
 Auditing Division, Mail Code 4112  
 409 3rd Street, S.W.  
 Washington, D.C. 20416

Re: NWBC Draft Audit Report

Dear Mr. Seabrooks:

This letter serves as the formal response of our client, Springboard Enterprises, Inc., to the Draft Report of the Audit of the National Women's Business Council ("NWBC" or the "Council"), which we received from your office on April 2, 2003. We respectfully submit that the Draft Report contains a number of findings and recommendations that are not supported by the facts and that rest on erroneous assumptions regarding the history of the Springboard forums, the creation of Springboard Enterprises as a non-profit entity, and its relationship to the NWBC and the Small Business Administration ("SBA").

### **A. General Comments on the Springboard Forums**

The Springboard forums were created through the substantial efforts of numerous organizations that for years have been at the forefront of advancing the interests of women entrepreneurs. The organizations, which include the [

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 ], and dozens of other corporate and university sponsors, have spearheaded the drive to increase the amount of equity capital available to women business owners. All of these organizations invested heavily in the success of the Springboard forums. Through a combination of funding, staffing, and expertise, they contributed the vital resources necessary to bring the Springboard forums to fruition and to maintain their on-going success.

Although it is true that the NWBC had a role in organizing and supporting the Springboard forums and that Council staff devoted time to these efforts, we respectfully submit that the OIG has misunderstood and overstated the Council's role. The reality is that the bulk of

Robert G. Seabrooks  
May 23, 2003  
Page 2

the funds, expertise, staffing, and in-kind support for the Springboard forums came from private entities, not the Federal Government. Moreover, the mere fact that the Council collaborated on the Springboard forums does not make Springboard a "Government program" or give the Government a proprietary interest in the forums.

Thus, we take strong exception to those portions of the Draft Report that assume that, where the NWBC (in addition to numerous non-governmental donors) provided some funding for a forum, the proceeds from the forum constitute "Government funds." The Springboard program was not developed for the NWBC or the SBA. Nor were the forums created by their co-sponsors to generate a profit or an investment return for themselves or for the Federal Government. On the contrary, the forums – and the various entities contributing to their success – sought not to reap a financial benefit, but to provide women entrepreneurs with access to capital.

The OIG's assertion that the Government has been "denied its fair share" and that the Government is entitled to certain of the forum proceeds is not supported by citation to legal authority and is wholly inconsistent with the NWBC's mission. Congress established the NWBC as an independent advisory council whose statutory mission is to "serve as an independent source of advice and policy recommendations" to the Interagency Committee on Women's Business Enterprise (the "ICWBE"), to the SBA, to Congress, and to the President. Pub. L. 103-403, § 405, 108 Stat. 4175, 4195 (as amended, 15 U.S.C. § 631, Note). Congress intended the NWBC to serve a "private sector advisory function," as distinct from the role of the ICWBE as an interagency government body. H.R. Conf. Rep. No. 103-824, in 140 Cong. Rec. H10521, H10533 (Oct. 3, 1994).

Moreover, Congress has specified that the Council is obligated to "develop and promote new initiatives, policies, programs, and plans designed to foster women's business enterprise." 15 U.S.C. § 7106(d)(4) (2003). In fact, the Council itself states that its mission is "to promote bold initiatives, policies and programs designed to support women's business enterprises at all stages of development in the public and private sector marketplaces, from start-up to success to significance." NWBC web site, at <<<http://www.nwbc.gov/faqs/faqs.html#1>>>.

Thus, since its inception, the Council has co-sponsored and promoted a diverse array of public/private sector initiatives designed to foster women's business ownership. Many of these initiatives have involved strategic partnerships and agreements with private organizations and companies – Springboard is just one example. Moreover, the continuation of the Springboard program under the aegis of a separate non-profit organization is consistent with the best of what the Council contributes to women's entrepreneurship – nurturing the development of bold new initiatives and ideas for making equity capital more available to women business owners.

In this instance, the Springboard forums had become so successful and so important to the venture capital community that it made good sense to launch a separate non-profit

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organization that could continue to grow the Springboard concept. Those associated with the Springboard forums came to a consensus that a separate organization should be incorporated with the specific focus of educating women on how to grow their businesses through the use of private equity. The creation of this new non-profit would alleviate the staffing burden on the various private sponsors of the forums, sustain the growth of the Springboard program in the future, and guarantee access to substantial private funding.

As plans were being made to incorporate Springboard Enterprises, Council members were kept informed at every turn. See Minutes, Oct. 4, 2000, at 44, 44-45 (Ms. Millman: "Just so that people understand about Springboard . . ."; "[D]ecisions are being made now to spin this off, like we have done [with] other ideas and concepts . . ."); see also Minutes, Feb. 14, 2001, at 150, 151 (Ms. Millman: "[I]t's appropriate, like we have done with many other projects to spin Springboard off to its own enterprise"; "Debra and I are going to . . . move to Springboard . . ."). These Council members were encouraging and supportive, providing valuable guidance along the way.

Nevertheless, the OIG concludes that "SBE appears to have been given an unfair competitive advantage. . . . [The] connection with NWBC lent a certain degree of credibility to SBE and allowed it to take advantage of publicity NWBC had received for its forums and the connections NWBC had made within the venture capital community." Draft Rep. at 6. These comments completely mischaracterize the nature of the Springboard forums and exaggerate the influence of the Council on the venture capital community. Through its exposure to leading organizations like Entrepreneur, the Council gained knowledge, expertise, access to networks, and influence in high-growth entrepreneurship. Thus, if anything, it was the stature and relevance of the Council that was enhanced as a result of the Springboard collaboration.

Moreover, Springboard Enterprises did not "take advantage of publicity NWBC had received for its forums." Id. (emphasis added). As we have discussed, the Springboard forums did not belong to the Council, and the OIG overstates the Council's role in their success. In addition, Springboard Enterprises did not come into being because of the NWBC's "connections." It was created by the collaboration and planning of various individuals and organizations that had been working together for years to define and shape the community for women entrepreneurs.

In sum, we respectfully submit that the OIG's perspective on the Springboard program -- i.e., that it was a Government program supported by Government funds -- fundamentally misunderstands and misrepresents both the Council's mission and the nature of the Springboard initiative.

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**B. Comments on Specific Recommendations for Recovery of Funds**

Springboard Enterprises strongly disputes the specific conclusion by the OIG that Springboard Enterprises "inappropriately received the \$63,000 in leftover proceeds from the Mid-Atlantic forum . . . ." *Id.* The OIG states that funds collected at the Mid-Atlantic forum were "Government funds," *id.*, and that "the Government was denied its fair share of the leftover proceeds despite its considerable contributions . . . ." *Id.* at 10. As discussed above, however, this conclusion rests on the misguided premise that the Springboard forums were created by and for the Council, and that the Council expected or should have received a financial return on its investment in the Springboard forums.

Moreover, Springboard Enterprises was not "unjustly enriched by receiving \$63,000 in leftover forum proceeds generated prior to its incorporation." *Id.* Springboard Enterprises was conceived and organized by many of the same individuals in the public and private sectors who were responsible for the success of the Springboard forums. Although Springboard Enterprises, the entity, was incorporated after the Mid-Atlantic Forum, the transition of responsibility for the Springboard forums to a separate non-profit was simply the next stage in the evolution of the Springboard concept.

Indeed, the provision to Springboard Enterprises of funds representing the excess of forum receipts over expenditures was consistent with long-standing practice. The organizers of the various Springboard forums had a history of re-investing proceeds from forums into the planning and development of subsequent forums. In other words, each forum helped to fund the next forum. Thus, when it was decided that a separate non-profit entity should be established to manage the Springboard forums, an appropriate and important step was to invest certain proceeds from the Mid-Atlantic Forum in the new venture. In this sense, the money given to Springboard Enterprises was not viewed by the forum organizers as profit-sharing with the new non-profit, but rather as "seed" money for subsequent forums. In fact, Council funds were not needed after 2000 because proceeds from the Mid-Atlantic Forum were sufficient to fund subsequent forums in New York and the Midwest.

By the same token, we object to the suggestion that Springboard Enterprises and other forum co-hosts should be required to justify their retention of certain proceeds from the Springboard forums based on estimated expenses incurred. The Council has no legitimate claim to any of the funds retained or received by the forum co-hosts, as any proceeds from the forums are directly and primarily attributable to the substantial investment of time and money by private organizations. The reality is that all funds received by the forum co-hosts have been used by these organizations to continue the promotion of women's business enterprise. It is misguided to suggest that they should now be divested of funds that were received legitimately and that have been put to uses that are entirely consistent with the mission of the Council.

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Never in its history or in its stated mission has the Council sought to obtain a financial benefit from its efforts. Rather, the Council's historical role has been the funding and "seeding" of various public/private initiatives. If the SBA were to compel Springboard Enterprises or other forum co-hosts to remit funds to the Federal Government, the result would be the imposition of an unjustifiable and short-sighted penalty on organizations that are committed to promoting the growth of women's business enterprise. This result would be a setback to the interests of women business owners, whose interests the NWBC was established to advance.

We respectfully request the opportunity to meet with the OIG to discuss these issues further.

Sincerely,

66

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May 23, 2003

**BY FACSIMILE AND FEDERAL EXPRESS**

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U.S. Small Business Administration  
Office of the Inspector General  
Auditing Division, Mail Code 4112  
409 3rd Street, S.W.  
Washington, D.C. 20416

Re: NWBC Draft Audit Report

Dear Mr. Seabrooks:

This letter serves as the formal response of our clients, Amy Millman and Debra Filtzer, to the Draft Report of the Audit of the National Women's Business Council ("NWBC" or the "Council"), which we received from your office on April 2, 2003.

As you know, our clients gave their full cooperation to the Office of the Inspector General ("OIG") throughout the audit process. At every opportunity, Ms. Millman attempted to explain her responsibilities at the Council and her involvement with the Springboard program. In particular, at a meeting with the OIG at the offices of Covington & Burling on January 9, 2002, Ms. Millman cooperatively and candidly answered an expansive set of questions from the OIG that covered many if not all of the subjects addressed in the Draft Report.

Nevertheless, the tone and substance of the Draft Report reinforce our long-held concern that, at the very beginning of its audit, the OIG quickly became disposed to take an unfavorable view of Ms. Millman and Ms. Filtzer. Indeed, the OIG appears to have disregarded, mischaracterized, or misunderstood much of what Ms. Millman conveyed during the January 9, 2002 meeting. Ultimately, we are left with the impression that the OIG's unfavorable view of Ms. Millman and Ms. Filtzer has colored the contents of the Draft Report, as reflected in its inclusion of findings and recommendations that can only be characterized as tendentious. We offer the comments below in the hope that the OIG will modify its report in order to provide a more accurate and balanced perspective on the activities of Ms. Millman and Ms. Filtzer, as well as to withdraw those recommendations that are without a legal or factual basis.

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## **I. Summary of Ms. Millman's and Ms. Filtzer's Position**

We respectfully submit that the Draft Report contains a number of findings and recommendations that are not supported by the facts and that rest on erroneous assumptions about the NWBC, its mission, and its relationship to the Small Business Administration ("SBA") and to Springboard Enterprises, Inc. We also feel that the report unfairly characterizes the commitment of Ms. Millman and Ms. Filtzer to the work of the Council and their motivation in developing the Springboard program.

The gist of the Draft Report is that during Ms. Millman's tenure as Executive Director of the NWBC, the Council's business practices violated a number of federal regulations, and that Ms. Millman and Ms. Filtzer engaged in ethics violations in connection with their involvement with Springboard Enterprises. The report also emphasizes, however, that many of the alleged violations can be attributed to the historical understanding by the Council and by the SBA itself that the NWBC was a non-SBA entity, which in turn led to insufficient oversight of the Council's activities by various SBA offices. Nevertheless, the OIG now recommends collecting tens of thousands of dollars from our clients, based primarily on allegations that Ms. Millman and Ms. Filtzer violated the federal travel regulations and SBA travel policy.

While we address the substance of the report in more detail below, we pause to make a few observations at the outset. The OIG's recommendation that our clients should reimburse the Government for their Council-related travel is utterly misguided. The OIG seeks to recover tens of thousands of dollars because documentation for Council-related travel either does not exist or was dated after the travel took place. As we discuss in more detail below, this recommendation is grossly unfair, given that the Government has already processed and approved these reimbursements, the travel was taken to carry out legitimate Council business, and our clients relied on a trusted colleague to handle all aspects of travel reimbursement. It is fair to assume that this colleague acted in conformity with the training and instructions she received from the SBA. Thus, it is ill-advised to recommend that Ms. Millman and Ms. Filtzer be required, after the fact, to pay for official government travel out of their own pockets, because of paperwork errors that resulted from inadequate guidance (or perhaps even incorrect instructions) from the SBA itself.

By the same token, a number of the OIG's other findings and recommendations are not justified by the facts. Ms. Millman conducted the affairs of the Council with a firm belief that her practices were proper – a belief buttressed by the fact that transactions of all types were processed routinely and without question by various offices within the SBA. Thus, in areas such as procurement, use of the Business Assistance Trust Fund, and office purchases, Ms. Millman should not be penalized for faithfully executing her responsibilities.

In addition, we object to any suggestion in the Draft Report that Ms. Millman and Ms. Filtzer shirked their Council duties in favor of work on Springboard. Although Springboard was



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time-consuming, Ms. Millman and Ms. Filtzer were fully engaged on a number of other Council initiatives. Indeed, while the OIG faults our clients for the extent of their involvement with Springboard, the Council Chair and its members consistently praised them for the very same efforts, which the Council viewed as consistent with its mission.

Moreover, we take strong exception to those portions of the report that seek to inculcate Debra Filtzer. As you know, Ms. Filtzer was an employee of the Council who reported to Ms. Millman and, ultimately, to the Council members and its Chair. Accordingly, decisions about travel arrangements (including decisions about what trips she should take) and other Council business were not hers to make. Ms. Filtzer followed the instructions of her superiors and should not now be asked to remit large sums of money to the Government that were expended at the behest of others and on behalf of the Council.

## II. Specific Comments

### A. Finding 1: Alleged "Possible Violations" of Government Ethics Regulations

The Draft Report states that Ms. Millman and Ms. Filtzer "appear to have violated ethics regulations by (1) participating personally and substantially in an official capacity in particular matters which had a direct and predictable effect on the financial interest of an organization with which they were affiliated, (2) engaging in outside activities that conflicted with their official duties, and (3) using Government equipment and time for other than authorized purposes." Draft Report at 3. The report continues by stating that "as SBA employees, they were bound by the laws of the United States, and the ethics regulations promulgated by the Office of Government Ethics, as well as any supplemental Agency regulations." *Id.* at 3 (emphasis added).

The OIG acknowledges, however, that "many SBA officials did not consider NWBC employees to be SBA employees and treated NWBC as a non-SBA entity." *Id.* at 1; see also id. at 5 ("During the time period covered by this audit . . . there was confusion within SBA as to the status of NWBC staff."). The OIG notes further that it was only during the audit process that the "SBA determined that NWBC's staff are SBA employees subject to all of the same rules and restrictions placed on any SBA employee." *Id.* at 1.<sup>1</sup>

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<sup>1</sup> In fact, one may fairly question whether anyone within the SBA believed that the NWBC was an SBA entity prior to the initiation of this Audit. The Draft Report is replete with statements from various SBA offices to the effect that the NWBC was not considered an SBA entity. Indeed, as the OIG points out, many of these offices – including the Office of Procurement and Grants Management, the Office of the Chief Financial Officer, and the Office of Human Resources – provided insufficient oversight to the Council as a result of their understanding of the NWBC's status within the SBA.

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Indeed, the view expressed by SBA officials during the audit process is fully consistent with the Council's history. Congress established the NWBC as an independent advisory council whose statutory mission is to "serve as an independent source of advice and policy recommendations" to the Interagency Committee on Women's Business Enterprise (the "ICWBE"), to the SBA, to Congress, and to the President. Pub. L. 103-403, § 405, 108 Stat. 4175, 4195 (as amended, 15 U.S.C. § 631, Note). Congress intended the NWBC to serve a "private sector advisory function," as distinct from the role of the ICWBE as an interagency government body. H.R. Conf. Rep. No. 103-824, in 140 Cong. Rec. H10521, H10533 (Oct. 3, 1994). Accordingly, the Executive Director and staff of the NWBC were appointed without regard to the competitive service requirements of the federal code and are paid without regard to the General Schedule pay scale.

In 1992, as a result of budgetary constraints, the Council was given office space in the SBA's Washington, D.C. headquarters. Two years later, the SBA agreed to assume the role of fiscal agent for the Council, replacing the General Services Administration. Despite this limited involvement with the SBA, the Council did not exist as an office or department of the SBA. In fact, the only function of significance performed by the SBA was approving and processing NWBC contracts, agreements, and expenditures. Otherwise, the Council operated as Congress intended – as an independent statutory commission.

Because of the SBA's own "uncertainty" concerning the status of Ms. Millman and Ms. Filtzer, the SBA did not determine whether they should be required to file Confidential Financial Disclosure Reports, and no ethics training was provided to them. Given the acknowledged ambiguity of the status of Ms. Millman and Ms. Filtzer, we submit that it is unfair to conclude that they could be guilty of ethics violations when there was a long-standing understanding, shared by the SBA itself, that Council employees were not SBA employees and that the Council was a non-SBA entity. Ms. Millman and Ms. Filtzer operated under this understanding, and they should not be criticized for failing to adhere to standards that appear not to have applied to them during the term of their employment.

Even if the OIG believes that it can hold Ms. Millman and Ms. Filtzer accountable for violations of ethics regulations, its conclusion that such regulations were violated ignores the interrelationship between the work of the Council and the development, and ultimate launch, of Springboard Enterprises as a separate non-profit organization. The Council was not set up to become a profit center for the Federal Government or to generate an investment return, but rather to serve as a catalyst in making opportunities available to women business owners. Indeed, Congress has specified that the Council is obligated to "develop and promote new initiatives, policies, programs, and plans designed to foster women's business enterprise." 15 U.S.C. § 7106(d)(4) (2003). Moreover, the Council itself states that its mission is "to promote bold initiatives, policies and programs designed to support women's business enterprises at all stages

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of development in the public and private sector marketplaces, from start-up to success to significance." NWBC web site, at <<<http://www.nwbc.gov/faqs/faqs.html#1>>>.

Thus, since its inception, the Council has sponsored and promoted a diverse array of public/private sector initiatives designed to foster women's business ownership. Many of these initiatives have involved strategic partnerships and agreements with private organizations and companies, all of which were approved through the Council's annual budgeting process.

Under Ms. Millman's leadership, the Springboard program, launched in 1999 by several private organizations and individuals in cooperation with NWBC, became the most successful of the countless programs to which the Council gave support and funding. Indeed, the Council had a role in developing the Springboard concept and contributing funds for the development of Springboard programs, a web site, and other supporting materials. Non-governmental sponsors, however, contributed the bulk of the funds and in-kind support.

In this sense, the Springboard program represented exactly the kind of public/private collaboration contemplated by Congress when it established the NWBC. As the Springboard program came into existence and quickly became a success, Council members were kept informed about the program, about the involvement of NWBC staff in the program, and about the intention to create a non-profit organization that could sustain and build on the Springboard efforts. See Minutes, Oct. 4, 2000, at 44, 44-45 (Ms. Millman: "Just so that people understand about Springboard . . ."; "[D]ecisions are being made now to spin this off, like we have done [with] other ideas and concepts . . ."); see also Minutes, Feb. 14, 2001, at 150, 151 (Ms. Millman: "[I]t's appropriate, like we have done with many other projects, to spin Springboard off to its own enterprise."; "Debra and I are going to . . . move to Springboard . . ."). Indeed, the concept of launching a separate organization with the Council's support was nothing new — the Council had "spun off" other organizations in the past. See Minutes, Feb. 14, 2001, at 152 (Chairperson Koplovitz: "There have been other initiatives that have been spun off from the Council in the past that people here or some of the people here who have a long history understand.")

Nevertheless, the OIG concludes that "SBE appears to have been given an unfair competitive advantage. . . . [The] connection with NWBC lent a certain degree of credibility to SBE and allowed it to take advantage of publicity NWBC had received for its forums and the connections NWBC had made within the venture capital community." Draft Report at 6. To begin with, it is unclear what the OIG means by the phrase "unfair competitive advantage," since Springboard was a non-profit entity that worked in close cooperation with a network of other non-profits that shared similar goals. More fundamentally, these comments suggest that the OIG profoundly misunderstands the relationship between the work of the Council and the launch of Springboard Enterprises.

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Springboard Enterprises was not created out of Ms. Millman's self-interest, nor did its creation improperly leverage the work of the Council to the Council's detriment. Springboard Enterprises was established in order to guarantee access to substantial private funding, to alleviate the staffing burden on the various private sponsors of the forums, and to sustain the growth of the Springboard program in the future. At the time of Springboard Enterprises's incorporation in September 2000, Ms. Millman had made no decision to leave the Council, and she was listed as "President" on the Articles of Incorporation simply as a placeholder. Her decision to leave the Council was not made until after the 2000 elections, and she promptly notified the Council at the February 14, 2001 meeting.

As these facts make clear, the time that Ms. Millman and Ms. Filtzer spent working on Springboard forums and on the creation of Springboard Enterprises did not "conflict with their official duties." *Id.* at 5. Rather, this work was very much a part of their official duties, as evidenced by the continued support by the Council of their efforts throughout 2000 and 2001. *See* Minutes, Feb. 14, 2001, at 153-54 (Chairperson Koplovitz: "I think this Council owes [Ms. Millman and Ms. Filtzer] enormous gratitude for seeing the potential of [Springboard] and being able to move it onto the next levels . . ."). The creation of Springboard Enterprises did not disadvantage the Council, nor did it disadvantage any non-profit entity; on the contrary, it advanced the Council's mission of generating support for women business owners.

#### **B. Finding 2: Allegation that NWBC Entered Into Inappropriate Agreements**

The second finding by the OIG suggests that the NWBC's core business practices violated numerous procurement regulations. The OIG, however, ignores the fact that many of the Council's business practices – including co-sponsorship arrangements, grants, and sole-sourced contracts – were entirely consistent with Congress's intent that the NWBC "develop and promote new initiatives, policies, programs, and plans designed to foster women's business enterprise." 15 U.S.C. § 7106(d)(4) (2003). The women's business community is close-knit, and the organizations that focus on promoting women's business enterprise are well-known and relatively few in number. Without these organizations' support, the Springboard forums, as well as other Council-supported initiatives, never would have succeeded. Thus, in order to carry out its mission, the Council sought to co-sponsor events, "seed" new initiatives through the provision of grants, and work with the premier organizations that were uniquely capable of bringing Council-supported initiatives to fruition. The OIG's finding that the Council entered into inappropriate agreements fails to take account of this business reality.

Moreover, it is arbitrary and unfair for the OIG to fault the Council for its contracting practices, given that when Ms. Millman was Executive Director of the NWBC, the SBA's own office responsible for ensuring compliance with applicable procurement regulations disclaimed any responsibility for the NWBC. As the Draft Report notes, any alleged irregularities "could have been avoided if OPGM [had] ensured that NWBC awards conformed to applicable procurement regulations." Draft Report at 7. OPGM officials believed, however, "that NWBC

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was not part of SBA." *Id.* Given OPGM's abdication of any responsibility over NWBC contracts, the Council was left to act in accordance with longstanding practices – practices that no one at the SBA questioned.<sup>2</sup>

**C. Finding 3: Alleged Violations of Federal Travel Regulations and SBA Travel Policy**

The OIG recommends collecting over \$45,000 in travel expenses from Ms. Millman and over \$12,000 in travel expenses from Ms. Filtzer. We know of no legal basis for the OIG to recommend recovering travel reimbursements that have already been processed and paid by the SBA. In any event, it is grossly unfair for the government to suggest, years after the fact, that Ms. Millman and Ms. Filtzer must pay five-figure sums of money to the Federal Government for travel expenses that they actually incurred for travel that advanced the mission of the NWBC. While the SBA takes issue with various specific expenditures on various grounds, the stark fact of the matter is that Ms. Millman and Ms. Filtzer are being threatened with having to pay out of their own pockets for official government business trips that they took in order to further the work of their employer – and yet this remedy is proposed as a punishment for what in the vast bulk of cases amounts to nothing more than paperwork errors.

The linchpin of the OIG's position concerning these paperwork errors is that Ms. Millman's and Ms. Filtzer's travel was strictly governed by the Federal Travel Regulations, and yet the text of the law does not establish that basic premise. Under 41 C.F.R. § 301-1.3(a), the Federal Travel Regulations apply to "[e]mployees" traveling on official business. An employee is defined as "[a]n individual employed by an agency." 41 C.F.R. § 301-1.2. An "agency" is defined in 41 C.F.R. § 301-1.1 as "An Executive agency, as defined in 5 U.S.C. 101." Yet, the NWBC is not comprised within 5 U.S.C. § 101, which lists the departments of the executive branch of the federal government. Rather, the NWBC is an advisory council whose statutory mission is to "serve as an independent source of advice and policy recommendations" to the ICWBE, to the SBA, to Congress, and to the President. Pub. L. 103-403, § 405, 108 Stat. 4175, 4195 (as amended, 15 U.S.C. § 631, Note). Since on the face of the law it is far from clear that the Federal Travel Regulations even apply to the NWBC, it is difficult to understand how the OIG can hold Ms. Millman and Ms. Filtzer to those standards on an after-the-fact basis, much

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<sup>2</sup> In addition, the OIG fails to take account of the fact that NWBC [b6] was responsible for handling all procurement-related paperwork. While Ms. Millman had overall responsibility for Council business, it is unfair in the extreme to hold her accountable for problems in documentation and processing of paperwork by an employee who she understood to have been hired and trained to handle such matters.

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less apply those standards to demand that Ms. Millman and Ms. Filtzer, now private citizens, use their personal savings to pay the cost of official trips that they took long ago.

Moreover, even if these regulations were held to authorize retroactive recovery of reimbursements, Ms. Millman and Ms. Filtzer should not be penalized by the OIG's decision, months and years after the fact, to apply standards that were never applied to NWBC travel at the time the trips were taken. Even prior to the arrival of Ms. Millman or Ms. Filtzer at the NWBC, longstanding practices were in place concerning travel arrangements. In addition, Ms. Millman and Ms. Filtzer relied on a trusted colleague, NWBC [b6] to attain the necessary knowledge and training on applicable travel regulations and to submit the appropriate paperwork. Indeed, [b6] was hired for the specific purpose of overseeing all administrative aspects of the Council's work. At no time were Ms. Millman and Ms. Filtzer given any indication that [b6] was not following appropriate travel reimbursement procedures. Nor can Ms. Millman and Ms. Filtzer comment on the propriety of specific reimbursement requests submitted by [b6] on their behalf or explain why [b6] appears to have failed to create contemporaneous documentation of the fact that the trips in question were authorized. Our clients do know, however, that [b6] made a practice of seeking guidance from various SBA officials and that she sought guidance in the particular area of travel reimbursements. Thus, it is reasonable to infer that whatever actions [b6] took were consistent with the instructions she received from the SBA.

Indeed, the OIG should not overlook the fact that the SBA itself processed and paid for Council-related travel repeatedly throughout Ms. Millman's and Ms. Filtzer's tenure. Thus, by all indications – whether from [b6] or from the SBA – Ms. Millman and Ms. Filtzer had every reason to believe that they were following the applicable rules and regulations. Nothing in the OIG's post hoc review can obscure this fundamental point.

Our clients also take particular exception to a number of specific conclusions reached by the OIG with respect to their travel practices. First, as the OIG notes in the Draft Report, the travel issue with respect to Ms. Millman's daughter has been resolved, and funds required to reimburse the Government were withheld from Ms. Millman's final paycheck at the Council. Given that Ms. Millman promptly corrected this matter and made full payment to the SBA, its inclusion in the Draft Report suggests an effort to cast Ms. Millman in as unflattering a light as possible.

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<sup>3</sup> To the extent that the OIG's recommendation for recovery of travel reimbursements is based on SBA travel policy, as distinct from the Federal Travel Regulations, Ms. Millman and Ms. Filtzer reiterate their argument that both the Council and the SBA itself treated the Council as a non-SBA entity during their tenure.

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Second, the OIG's disapproval of the weekend staff meeting in Las Vegas ignores the fact that extensive Council business was conducted on this trip. It is therefore unfair to conclude that the Council "wasted and mismanaged Government funds." Draft Report at 12.

Third, the OIG unfairly characterizes the trip to Massachusetts. Ms. Millman explained at length in her January 9, 2002 meeting with the OIG that the primary purpose of the set of meetings was to discuss follow-up issues related to the Springboard forums, not, as the OIG suggests, to hold a board meeting of Springboard Enterprises. We submit that the OIG places undue emphasis on the written agenda and disregards Ms. Millman's account of those meetings.

Moreover, we strongly object to the OIG's recommendations, as set out in Appendix B to the Draft Report, that particular funds be recovered from Ms. Millman and Ms. Filtzer. To the extent that the OIG recommends recovering funds related to the Council meetings in Massachusetts and Nevada, we rely on the arguments stated above. Legitimate Council business was conducted at these meetings.

In addition, the OIG's recommendation for recovery of overages related to a "duty station lodging expense," or a lodging expense "in excess of per diem," disregards the fact that, in most instances, Ms. Millman and Ms. Filtzer were simply complying with the travel preferences of Council members. Ms. Millman was the Executive Director of the NWBC, and as such she reported to the Council; she did not dictate how the Council would conduct its business. Likewise, Ms. Filtzer, as an employee of the Council, certainly had no control over what hotels were used or what travel expenses were incurred to carry out Council business. Accordingly, Ms. Millman and, a fortiori, Ms. Filtzer, should not be held to account for these overages.

The remaining and most pervasive rationale for recovering funds from our clients – "Post-dated or Unauthorized Conference Travel" – is the most objectionable. Throughout their tenure at the Council, Ms. Millman and Ms. Filtzer traveled around the country conducting the Council's business. They worked tirelessly to promote the Council's mission and executed their duties faithfully and diligently. In connection with each of these legitimate business trips, they relied on a colleague, [ 66 ] to submit the appropriate paperwork and obtain reimbursement from the Federal Government. Indeed, the SBA processed and paid these reimbursement requests routinely. Thus, up until the initiation of this Audit, no one – from the junior-most employee at the Council to the senior-most officials at the SBA – questioned the propriety of the Council's practices. Now, two years after Ms. Millman and Ms. Filtzer left the Council, the OIG recommends recovering vast sums of money from them because certain paperwork either was not submitted or was submitted late. We cannot help finding this proposed remedy for paperwork errors to be utterly Draconian.

Although the OIG sharply criticizes the NWBC's travel practices, this plainly is not a situation involving self-enrichment or fraud. Travel authorizations were not back-dated to hide the fact that they were prepared late. No reimbursement requests were submitted for travel that

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never took place. Quite the opposite: these were real trips for real business, yet the forms were filled out incorrectly. Because Ms. Millman and Ms. Filtzer relied on a colleague who turns out to have made paperwork errors, and because they were given "insufficient oversight" by OCFO officials, *id.*, they are now being threatened with having to defray out of their own pockets tens of thousands of dollars in expenditures for official government business.

We would not hesitate to endorse the proposition that the Audit turned up a need to impose more rigorous controls in the future. But the proposal to recover money from our clients, based on an application of long-overlooked rules of questionable applicability, is wildly disproportionate to the actions of Ms. Millman and Ms. Filtzer. We take strong exception to the proposal.

**D. Finding 4: Allegations of Improper Use of NWBC's Business Assistance Trust Fund**

Ms. Millman explained in the January 9, 2002 meeting with the OIG that she had had little or no training on the proper use of the Business Assistance Trust Fund ("BATF"). Indeed, the OIG asserts that the BATF was used improperly "because SBA's internal controls to detect and prevent such abuse were lacking or ineffective." *Id.* at 16. In fact, "OCFO officials processed all the BATF transactions that were approved by the Executive Director without questioning any transactions. Also, SBA did not provide any official guidance about the proper use of the BATF." *Id.* As with the areas of contracting and travel reimbursement, Ms. Millman acted in accordance with the office practices of the NWBC, and it was not suggested until the OIG's Audit that there was any deviation from applicable standards.

The OIG suggests that Ms. Millman must remit \$4,921.43 to correct for "reimbursements for Government-paid travel expenses that were improperly deposited into the BATF," as well as an additional \$1,682.30 "to cover the shortfall in the BATF resulting from a reception held in her honor." *Id.* at 17. We respectfully consider this recommendation to be inappropriate.

First, the OIG has engaged in double-counting. The report notes that "when travelers reimbursed NWBC \$7,297.26 for personal travel that was paid for by the NWBC, NWBC deposited the checks into the BATF[,] where some of it was later used to pay for catering expenses at a reception in honor of the Executive Director . . ." *Id.* at 16 (emphasis added). Thus, to the extent that the OIG seeks to hold Ms. Millman responsible for the difference between the remaining balance in the BATF (\$2,375.83) and the amount reimbursed to the NWBC for travel expenses (\$7,297.26), that difference includes any BATF funds used to pay for the reception. Accordingly, the OIG's suggestion that Ms. Millman is responsible both for the difference – \$4,921.43 – as well as the overage for the reception – \$1,682.30 – is plainly wrong.

Second, there is no allegation in the report that Ms. Millman misused all of the \$4,921.43. Rather, the only specific allegation of misuse of funds is with regard to the \$1,682.30 that



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allegedly was used to pay for the reception. Thus, if the OIG were to hold Ms. Millman responsible for the \$3,239.13 above the \$1,682.30 allegedly used for the reception, it would be suggesting that she is personally responsible for travel expenses incurred by others and that she should be held personally accountable for \$3,239.13 that she neither received nor benefited from. This conclusion is plainly inappropriate in light of Ms. Millman's lack of training with respect to using the BATF and the OIG's failure to identify any improper expenditure other than the reception in Ms. Millman's honor.

Third, the OIG has failed to justify holding Ms. Millman personally responsible for the \$1,682.30 in BATF money that allegedly was used for the reception. Although she had ultimate responsibility for approving expenditures from the BATF, Ms. Millman delegated the management of the BATF to her subordinates. Moreover, she had no knowledge that the use of such funds for something like a reception might be considered improper. In fact, Ms. Millman believed that BATF funds could be used for catering. Given the complete lack of oversight provided by the SBA, the OIG should not now seek to exact a penalty from Ms. Millman for expenditures that she believed were entirely proper at the time they were made.

**E. Finding 5: Other Allegations of Inappropriate Activities**

**1. Allegedly Inappropriate Use of Purchase Card**

Ms. Millman has explained to the OIG that she had little involvement with the processing of reimbursement requests and that she relied on [redacted] to ensure that applicable regulations were followed. Thus, although Ms. Millman was "the approving official" for the NWBC's credit card, *id.* at 19, and an NWBC staff member evidently made the general assertion that "the Executive Director approved all credit card purchases," *id.*, it is unfair to hold Ms. Millman personally responsible for purchases that cannot be attributed directly to her.

In addition, we question the OIG's conclusory statements that the various purchases constituted unallowable "gifts" and "other expenditures that did not go towards fulfilling NWBC's mission." *Id.* If the OIG has specific documentary or other tangible evidence that Ms. Millman deliberately used the NWBC's credit card for improper purchases, it should have been referenced or attached to the Draft Report. Accordingly, we object to the recommendation that SBA seek to recover \$1,398.95 from Ms. Millman.

**2. Allegedly Improper Cash Award to Ms. Filtzer**

Ms. Filtzer should not be required to reimburse the Government for the \$10,000 payment that she received. As Ms. Millman has explained, Ms. Filtzer was given this money by the private-sector organizers of the Mid-Atlantic Forum to reflect extensive efforts undertaken by Ms. Filtzer, on evenings and weekends, to make the forums a success. She was given this money in a good faith gesture to reward her for tireless efforts on behalf of the forums, and she received

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it in that spirit. Indeed, there was nothing duplicitous in the provision of this money to Ms. Filtzer. The payment was reflected on the ledger for the Mid-Atlantic Forum, and Ms. Filtzer reported the income on her federal income tax return.

As we have argued throughout this submission, we strongly disagree with the OIG's statement that "the forum proceeds were Government funds." Id. at 18. As we have pointed out, the OIG does not provide support for its apparent view that the Government automatically owned any excess of the receipts of the forums over their expenses. The Council was established to "develop and promote new initiatives . . . [and] programs," 15 U.S.C. § 7106(d)(4), not to serve as a profit center for the Federal Government.

In addition, the OIG does not provide any legal authority for its claim that the payment to Ms. Filtzer constituted a "performance award" to a Government employee. Id. If the OIG has such authority, it should have been cited and/or appended to the Draft Report. Otherwise, Ms. Filtzer cannot now be required, years later, to remit these funds to the Federal Government.

### 3. Allegedly Improper Cash Awards to Ms. Millman

The OIG also concludes that cash awards to Ms. Millman that were authorized by the Chair of the NWBC were improper and that the current Executive Director should determine whether these funds should be recovered. Again, the OIG's conclusion rests on the faulty premise that individuals within the NWBC and the SBA considered the Council to be a part of the SBA. As the OIG itself acknowledges, this was not anyone's understanding. In fact, the office responsible for processing the awards to Ms. Millman "believed that NWBC was not part of SBA." Id. It is simply unfair to require repayment of funds that were awarded based on an understanding, both within the Council and the SBA, that is completely at odds with the position advanced by the OIG in the Draft Report.

### III. Conclusion

By all accounts, the Springboard forums for women entrepreneurs have been a dramatic success, made possible by extensive private funding along with "seed" money from the NWBC. Ms. Millman and Ms. Filtzer can be proud of the service they put in while employed by the NWBC. While the imposition at the NWBC of strong controls on a going-forward basis is laudable, we respectfully disagree with the OIG's recommendation that the SBA pursue recoveries against Ms. Millman and Ms. Filtzer. We submit that such an effort lacks support in the law and would impose an unfairly harsh retroactive burden on two dedicated individuals. We ask that the OIG report be revised to reflect the concerns and corrections expressed in this letter.

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We also respectfully request the opportunity to meet with the OIG to discuss these issues further.

Sincerely,

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Stephen P. Anthony